

Page 144

[1] what was covered at the deposition with the  
[2] deposition of witnesses you could review with  
[3] Witness A, Prospective Witness A, with all the  
[4] things that were testified to by Witness B. And  
[5] such questions as they are going to ask you how  
[6] long you worked there, they're going to ask you  
[7] whether or not you had any particular knowledge  
[8] with respect to what went on inside of a particular  
[9] building at such an address.

[10] And then certainly you could ask in your  
[11] preparation--I would assume you would--tell us what  
[12] happened as far as you can recall that went on  
[13] inside that building when you were doing your  
[14] services that were being furnished for whatever X,  
[15] Y and Z.

[16] But where it comes to the point that  
[17] witness where you would be seeking to tell Witness  
[18] B precisely what witnesses's answer was to the  
[19] questions that were going to be asked--and again,  
[20] we are not talking about how long Witness A worked  
[21] for the company. We are not talking about  
[22] precluding you from that. We are talking about the

Page 145

[1] questions that go to the heart of the issue. So  
[2] you're going to have to make judgment calls,  
[3] Mr. Begleiter, as you go through this with your  
[4] witnesses.

[5] MR. BEGLEITER: Again for the rest of the  
[6] depositions now or for the hearing?

[7] JUDGE SIPPEL: I'm only talking  
[8] depositions now.

[9] MR. BEGLEITER: Your Honor, we basically  
[10] are reaching the end. We had now, this is the  
[11] sixth day of deposition and we have gone through a  
[12] lot of witnesses already. We have been scrupulous  
[13] in following Your Honor's direction.

[14] JUDGE SIPPEL: I appreciate that.

[15] That takes care of that issue for now as  
[16] far as I'm concerned. Is there another issue or  
[17] another question?

[18] MR. BECKNER: There is one other witness  
[19] that we had not originally designated and that we  
[20] would now like to depose, and that witness is  
[21] Mr. Howard Barr who, along with Mr. Lehmkuhl, was  
[22] the lawyer who handled Liberty's microwave

Page 146

[1] applications at the FCC, and also responded to  
[2] Requests for Information made by, I think, the  
[3] Deputy Chief of the Wireless Bureau initially, once  
[4] it came to light that Liberty had operating  
[5] unlicensed microwave paths.

[6] And the reason we initially had not  
[7] designated Mr. Barr is that Mr. Lehmkuhl's name  
[8] appears on most of the applications, and mindful of  
[9] your admonition to keep the witness list short, we  
[10] decided to pick one of the two.

[11] What happened subsequently is we took  
[12] Mr. Lehmkuhl's deposition, and there are a number  
[13] of--and I don't have the transcript here, but there  
[14] are a number of instances where I think he  
[15] contradicted himself, and more importantly he  
[16] admitted with respect to at least one application  
[17] we showed him that he had it signed in blank by the  
[18] client. It was FCC Form 402, that he had them  
[19] sitting on the shelf and they were signed by the  
[20] client, and then he typed in all the information

Page 147

[1] want to probe a little bit more deeply into the  
[2] mechanics of how Liberty's applications were  
[3] handled.

[4] MR. SPITZER: This is Eliot Spitzer. Let  
[5] me react at two levels. I have to respond to Mr.  
[6] Beckner's mischaracterization of the record. The  
[7] more accurate statement of what Mr. Lehmkuhl  
[8] testified to--and Mr. Lehmkuhl is an attorney whose  
[9] ethics has never been challenged--is an employee at  
[10] Liberty signed the 402s in blank form, but is a  
[11] government form. But before it was submitted, he  
[12] reviewed all of the information that was appended  
[13] to it and went over the file prior to its being  
[14] submitted.

[15] So yes, he did undertake the mechanical  
[16] act of filing, and I'm not defending the propriety  
[17] of that, but I want the record to be clear it was  
[18] not as though an application was signed in blank  
[19] and then submitted without the appropriate review  
[20] prior to it being submitted.

[21] That issue aside, that is entirely  
[22] irrelevant as to whether Mr. Beckner at this late

Page 148

[1] stage is entitled to begin noticing other  
[2] depositions. This process was designed to be  
[3] initiated in early May. He could have begun his  
[4] deposition schedule. He would at that point  
[5] uncovered leads he may wish to have pursued and may  
[6] have had an opportunity to notice additional  
[7] depositions. He chose, himself, not to notice the  
[8] depositions until late in the game.

[9] We have complied and gotten people down  
[10] here. We have rearranged everybody's lives and  
[11] schedules to be available to be deposed. And even  
[12] with respect to Mr. McKennon and Mr. Stern, all the  
[13] other individuals who were mentioned, we have  
[14] endeavored--and I think they will acknowledge  
[15] this--to work as much as possible to get everybody  
[16] deposed in the time frame that was discussed.

[17] Now, this morning Mr. Beckner simply  
[18] starts throwing out new names because it was in  
[19] response to deposition questions that he's  
[20] developing other leads. That is his own fault,  
[21] Your Honor, and he has to live with the havoc he's  
[22] created by failing to notice depositions early on.

Page 149

[1] JUDGE SIPPEL: How does the Bureau feel  
[2] about this, Mr. Weber?

[3] MR. WEBER: This is Joe Weber with the  
[4] Bureau. The Bureau shares Mr. Beckner's, I guess,  
[5] concern with regard to portions of Mr. Lehmkuhl's  
[6] testimony.

[7] The way the Bureau understood the  
[8] occurrence, with the blank application being  
[9] signed, there were portions of the exhibits to each  
[10] application which were identical, and those were  
[11] what were reviewed ahead of time before it was  
[12] filed, that the person signing the application had  
[13] seen the identical portions and okayed it, but the  
[14] individual application that was filed, the client  
[15] had never seen before it got filed. That's the way  
[16] the Bureau's understanding of it was.

[17] So a blank application was filed--a blank  
[18] application that was already signed was filled out  
[19] with some information that's the same in all  
[20] applications, and then other information that's  
[21] unique to each particular path applied for

Page 150

(1) seeing that unique information.

(2) As to the lateness of this new witness, as  
(3) you're aware, there have been a bunch of pleadings  
(4) back and forth regarding discovery, and I don't  
(5) think that either Time Warner nor the Bureau have  
(6) been dragging their feet so much that, if new  
(7) relevant information comes up pointing to a new  
(8) witness, we should be precluded from deposing that  
(9) new witness.

(10) MR. SPITZER: In an expectation that you  
(11) would render a ruling on this, we have tried to  
(12) contact Mr. Barr Tuesday morning and we have been  
(13) able unable to reach him. We didn't know about  
(14) this until this morning, so we don't know if he's  
(15) available this morning or not.

(16) JUDGE SIPPEL: Does he work for Liberty?

(17) MR. SPITZER: No. He's a partner in the  
(18) law firm of Pepper & Corazzini, which again is in  
(19) D.C., but I don't know his schedule or where he is  
(20) today.

(21) Now again, in terms of the relevance, I  
(22) simply don't see the nexus between the

Page 151

(1) testimony--whatever the testimony may have been  
(2) about the blank form and its being submitted and  
(3) Howard Barr, but I don't see that whatever was  
(4) developed in that deposition provides the  
(5) foundation at this date for seeking to call him in  
(6) for a deposition.

(7) JUDGE SIPPEL: I didn't hear from Mr. Holt  
(8) yet. Mr. Holt, did you have a point on this?

(9) MR. HOLT: Your Honor, I was not in  
(10) attendance at Mr. Lehmkuhl's deposition, so I can't  
(11) speak to the substance of his testimony, but in  
(12) response to the argument that the deposition is  
(13) being noticed at a late date, I mean I would simply  
(14) like to say that the expedited schedule that this  
(15) case has been proceeding under has placed  
(16) significant burdens on all parties concerned in our  
(17) ability to review information that's being provided  
(18) on a somewhat willing basis by Liberty. And if  
(19) information is developed later during the process,  
(20) the parties should have an opportunity to explore  
(21) that information so these issues can be aired fully  
(22) at the hearing.

Page 152

(1) It seems to me Mr. Beckner has a valid  
(2) concern about some information that was developed  
(3) during Mr. Lehmkuhl's deposition, and it's my  
(4) thought he should have an opportunity to pursue  
(5) that information by deposing other parties with  
(6) relevant knowledge.

(7) JUDGE SIPPEL: Okay. Am I to understand  
(8) that Mr. Barr was the one--he's from the  
(9) Washington, D.C., law firm here who filed the  
(10) applications?

(11) MR. SPITZER: His law firm filed the  
(12) application.

(13) MR. BECKNER: He's the partner in charge  
(14) of the account, I believe. Mr. Lehmkuhl, the man  
(15) we deposed last week, is an associate at the same  
(16) firm.

(17) JUDGE SIPPEL: At the same firm. There  
(18) was this series of applications which were  
(19) pre-signed by whom? An official at Liberty?

(20) MR. BEGLEITER: Yes.

(21) MR. SPITZER: By Behrooz Nourain, Your  
(22) Honor, but I'm sure I will be corrected if my

Page 153

(1) recollection has failed me, but I don't recall that  
(2) there is any testimony that Mr. Barr participated  
(3) or even knew about the documents being signed in  
(4) blank.

(5) JUDGE SIPPEL: Mr. Barr is an attorney, of  
(6) course, but he's not a principal of Liberty.  
(7) Mr. Nourain signed the application and he's going  
(8) to be deposed; right?

(9) MR. SPITZER: Tomorrow morning, Your  
(10) Honor.

(11) JUDGE SIPPEL: I would try to put Mr. Barr  
(12) on notice, but I would wait until tomorrow. It  
(13) doesn't seem to me--I go back to two things on  
(14) this. First of all, you're getting factual  
(15) information from Mr. Lehmkuhl that I can't make a  
(16) determination right here now whether or not it's  
(17) adequate or not, but it seems like he's given you a  
(18) lot of information.

(19) Number two, you still have the witness  
(20) whose name appears on the application who is going  
(21) to come up and testify tomorrow.

(22) Number three, as I said up front, the

Page 154

(1) burden is on Liberty on these issues.

(2) So there is going to be some material  
(3) information, some important relevant information  
(4) that's left undeveloped. It seems to me that it's  
(5) in Liberty's interest to see that it does get  
(6) properly developed.

(7) Right now I just don't have enough  
(8) information to be convinced that you need this  
(9) man's testimony. But as I said, my ruling will be  
(10) to use your best efforts--Liberty, to use your best  
(11) efforts--to get Mr. Barr at least on call for a  
(12) Friday deposition, and we will talk about it  
(13) further tomorrow if you depose Mr. Nourain.

(14) MR. BECKNER: All right, sir.

(15) MR. WEBER: One last point, Your Honor.

(16) JUDGE SIPPEL: Sure.

(17) MR. WEBER: Last week we were initially  
(18) wanting--we had Bruce McKennon on our schedule. He  
(19) also is in a similar situation to Mr. Stern where  
(20) his wife has also just gone through surgery.

(21) MR. BEGLEITER: Cancer also.

(22) MR. WEBER: Cancer also. Amazingly so.

Page 155

(1) The Bureau right now--we started leaning  
(2) towards not taking Mr. McKennon's deposition.  
(3) However, we have not come to that definite  
(4) conclusion yet. A number of the other witnesses  
(5) have at least raised Mr. McKennon's name which may  
(6) mean we would have some questions for him, but he  
(7) also would need to come next week, and if we are  
(8) able to fly him here--he's in Boston, and if we are  
(9) able to fly him here to Washington possibly, we  
(10) would have him on the same day we do Mr. Stern, if  
(11) there is no objection.

(12) JUDGE SIPPEL: Any kind of a situation  
(13) like that where you have a serious health situation  
(14) in the immediate family, sure, we will work around  
(15) that.

(16) MR. BEGLEITER: When I spoke to  
(17) Mr. McKennon, he asked me to call him in the middle  
(18) of the week. His statement to me was he didn't  
(19) want to leave his wife. I will ask him tomorrow to  
(20) do that, to come to Washington, but I will let him  
(21) know. I prefer he came here for a lot of reasons,  
(22) but I think he may prefer to be in Boston.

Page 156

(1) JUDGE SIPPEL: He couldn't be deposed by  
(2) telephone?  
(3) MR. BEGLEITER: I don't see why not.  
(4) MR. WEBER: I would expect his deposition  
(5) maybe to be a brief one, so I do hate telephonic  
(6) depositions, but when they're brief it is a big  
(7) money saver.  
(8) JUDGE SIPPEL: Take his deposition by  
(9) telephone unless you could convince me this person  
(10) is really going to be a key witness. Right now he  
(11) sounds like to me he's on the periphery, and you  
(12) are either doubtful as to whether you are going to  
(13) call him at hearing. So in light of all the  
(14) circumstances, the condition of his wife, my order  
(15) is to take his deposition by telephone. I take it  
(16) Mr. Stern is a more important witness; is that  
(17) correct?  
(18) MR. WEBER: That's correct, Your Honor.  
(19) JUDGE SIPPEL: I will leave the ruling on  
(20) Stern the way we did it up front. But I will give  
(21) you—I will give Mr. Stern any time up until  
(22) Thursday of next week to get his deposition taken.

Page 157

(1) You say he's going to come to Washington?  
(2) MR. KEAM: Yes.  
(3) MR. SPITZER: That's correct.  
(4) JUDGE SIPPEL: Any time up until Thursday  
(5) next week for him.  
(6) That takes care of, I think, four issues  
(7) so far. Anything else?  
(8) MR. SPITZER: That's it, Your Honor.  
(9) MR. BECKNER: That's it, Your Honor.  
(10) JUDGE SIPPEL: Okay. In the interest of  
(11) full and fair disclosure, I want to tell you at  
(12) this point that in order for me to attend  
(13) graduation of daughter number three, I'm going to  
(14) be out of the office on June the 7th, which is a  
(15) Friday, and on June the 10th, which is a Monday. I  
(16) need that time to take care of what I have to do up  
(17) there and to get back here.  
(18) MR. SPITZER: As the father of three  
(19) daughters, are there any daughters beyond three?  
(20) JUDGE SIPPEL: Number two has still not  
(21) been accounted for, but she's happily married and I  
(22) don't think there is going to be anything coming up

Page 158

(1) between now and the trial date for number two.  
(2) Again, in the interest of preserving my  
(3) credibility, I wanted to announce that information  
(4) at this point. I will get something briefly in  
(5) writing on these rulings, particularly since there  
(6) has been a request for an interlocutory appeal.  
(7) And I will be available, of course, tomorrow and  
(8) the rest of the week for these rulings.  
(9) MR. SPITZER: Thank you, Your Honor.  
(10) MR. BECKNER: Thank you.  
(11) JUDGE SIPPEL: Have a good afternoon.  
(12) (End of telephone conference call with  
(13) Judge Sippel at 4:00 p.m.)  
(14) (Whereupon, the Court Reporter read back  
(15) the previous question.)  
(16) BY MR. BECKNER:  
(17) Q: You heard the first half of my question  
(18) repeated to you before the telephone conference  
(19) call, and I will continue the question.  
(20) You will note there that on Appendix A  
(21) there is a column that says date license applied

Page 159

(1) 430/440 East 56th Street. It's about the middle of  
(2) the page.  
(3) A: 7/17/95.  
(4) Q: Correct. You see that?  
(5) A: Right.  
(6) Q: Do you have any reason to believe that  
(7) that date is not the date for which an application  
(8) was filed for the path to 430/440 East 56th Street?  
(9) A: I don't know.  
(10) MR. SPITZER: Let me state for the record,  
(11) I don't know this will save us some time, but I  
(12) think that counsel for Liberty has essentially  
(13) stipulated that we have not entered a formal  
(14) stipulation, but we agreed we are not disputing the  
(15) dates that appear on Appendix A. There are certain  
(16) ambiguities. As you can see from the document  
(17) itself, there is some that specify A or B in terms  
(18) of dates, so I'm not sure it will be especially  
(19) useful to ask a particular witness whether he knows  
(20) those dates.  
(21) MR. BECKNER: You will see where I'm going  
(22) with it in a minute. It's a little bit different.

Page 160

(1) THE WITNESS: Yes, I believe that's  
(2) correct.  
(3) BY MR. BECKNER:  
(4) Q: Looking again at Price Exhibit 3, which is  
(5) also in front of you, where there is a blank on  
(6) that date, if we assumed for purposes of our  
(7) questioning that an application was filed on July  
(8) 17 for 440 East 56th, and that fact is not  
(9) reflected on the "A" list—in other words, there is  
(10) nothing under application date on the "A" list for  
(11) that address.  
(12) A: Yes.  
(13) Q: —then the "A" list was probably prepared  
(14) before July 17th; is that a fair assumption?  
(15) A: Yes. I believe you indicated it was  
(16) prepared on July 13th, as someone noted on what was  
(17) apparently the cover memo to that exhibit, so that  
(18) would sound to be correct.  
(19) Q: Again, all I'm trying to do is trying to  
(20) focus as precisely as we can when Price Exhibit 3  
(21) was prepared, and we nailed it down to some time  
(22) between July 12 and July 17.

Page 161

(1) A: Sounds fair.  
(2) Q: July 12 being the most recent date that  
(3) appears on the exhibit and July 17 being the date  
(4) an application was filed for 440 East 56th Street  
(5) which is not reflected on Price Exhibit 3.  
(6) A: I think that's a reasonable conclusion.  
(7) Q: Now, there is another thing that I want to  
(8) clear up, if I can, about Price Exhibit 3. And  
(9) that is, who actually prepared these lists? I  
(10) noted in your memorandum you referred to my data,  
(11) and you say I do not cite every relevant date, et  
(12) cetera. First paragraph below the A, B, C, D  
(13) paragraphs.  
(14) A: Right.  
(15) Q: The question is: Your reference here to  
(16) my data and I do not cite, is that directed towards  
(17) these lists that are Price Exhibit 3?  
(18) A: Yes, that's the data.  
(19) Q: So this is your data modified by other  
(20) information that you received from, for example,  
(21) Mike Lehmkuhl?

Page 162

(1) Do you mean your as Peter Price individually or in  
(2) conjunction with others?

(3) THE WITNESS: Let me explain what I think  
(4) is what I meant here.

(5) BY MR. BECKNER:

(6) Q: That's fine.

(7) A: I could get from Mike Lehmkuhl the  
(8) technical information I wouldn't have, the dates of  
(9) licenses that were applied for or STAs applied for.  
(10) I don't believe Mr. Lehmkuhl would have the number  
(11) of particular units that were in the building.

(12) So when I suspect--when I say my data, I  
(13) would be getting the number of units from our  
(14) marketing department who would rule the roost on  
(15) the number of units that were contracted for. I  
(16) would be getting installation information from our  
(17) operations people, and I would be getting licensing  
(18) information from Lehmkuhl, and therefore putting  
(19) together a chart of my data from different sources.  
(20) I think that was the intention of the word there.

(21) Q: So, in effect, what you described is you  
(22) positioned yourself at sort of the hub with the

Page 163

(1) wheel with the number of spokes going out to  
(2) different information?

(3) A: For this exercise, right.

(4) Q: Now the other question I want to ask you  
(5) with respect to Price Exhibit 2 is, again trying to  
(6) sort out the origin of information that only made  
(7) it into this document. In the next paragraph below  
(8) the one we have been talking about, you say,  
(9) (reading) let's start by auditing my data for its  
(10) accuracy. I occasionally see different dates for  
(11) filings in different documents.

(12) Were there documents that you reviewed to  
(13) prepare these charts that are Price Exhibit 3?

(14) MR. SPITZER: Could I for the sake of  
(15) completeness of the record, you left out the last  
(16) four words of that sentence which you read from the  
(17) document which state, "due perhaps to amendments."

(18) MR. BECKNER: Okay.

(19) THE WITNESS: I think that's important  
(20) because, as I said before, there was a good deal of  
(21) back and forth at Pepper & Corazzini in getting the  
(22) information filled in and getting it filled in

Page 164

(1) accurately. And I believe the amendments that I  
(2) was referring to were the updating and changing of  
(3) some of the data as I was getting it or transposing  
(4) it from one page to another. That was what I was  
(5) referring to, I believe.

(6) BY MR. BECKNER:

(7) Q: So I take it, then, that you were  
(8) receiving information from various sources,  
(9) including Pepper & Corazzini, on several occasions?

(10) A: Right. Let me give you an example. Some  
(11) of this data in Price Exhibit 3 on the "A" list  
(12) goes back to 3/2/94 to take the example of contract  
(13) date on 440 East 56th Street. I concluded that the  
(14) document was prepared, give or take, in mid 1995.

(15) It could be that during that time the  
(16) number of units served was more of a change during  
(17) that period up or down, so the Marketing Department  
(18) might say if you want us to update how many units  
(19) we are serving today versus when we signed the  
(20) contract with the building, that might change. It  
(21) might have been--I heard during the dialogue with  
(22) the FCC that there was a license for one site that

Page 165

(1) would have been amended because the coordinates  
(2) were not correct. The license had to be  
(3) resubmitted because the filing wasn't appropriate  
(4) because an address was wrong or a coordinate was  
(5) wrong or the paperwork was wrong.

(6) So there could have been a variety of  
(7) reasons why the data from the time the contract was  
(8) signed or a license was originally requested, would  
(9) have changed at the time the analysis was made.  
(10) I'm speculating, but there could be any number of  
(11) things either from marketing licensing or  
(12) installation that would change during two years.

(13) Q: But all of that information was funneling  
(14) in to you?

(15) A: That's correct.

(16) Q: And what you're trying to do is make sense  
(17) of it?

(18) A: Reconcile it, yes, sir.

(19) Q: Make it coincide with this?

(20) A: Reconcile it. Coincide was virtually  
(21) impossible to do.

(22) But I should point out that's a good

Page 166

(1) illustration of how the process is dynamic and not  
(2) static. FCC licenses are granted, I learned  
(3) recently, and if you don't activate them in a  
(4) certain period of time, they could expire. If you  
(5) haven't activated the site, you would have to then  
(6) reapply for the license. Or a transmitter that  
(7) might have been the transmitter for the original  
(8) license might later turn out to be submitted for  
(9) another transmitter because in the meantime other  
(10) paths have been cleared and conflict with that path  
(11) that has not yet been activated. I'm learning a  
(12) very complex process that we did not know at the  
(13) beginning was going to be so complex.

(14) Q: I would like you to again turn to the  
(15) second page of Exhibit 2, Price Exhibit 2, the  
(16) memorandum and the concluding paragraph. It's  
(17) written, (reading) let's proceed with this  
(18) preliminary exercise, revise the data and format as  
(19) required, and begin to get our act in order.

(20) What I would like to know is that  
(21) following the preparation and distribution of this  
(22) memorandum, which has been marked as Price

Page 167

(1) Exhibit 2, what further happened along these same  
(2) lines of information gathering and data revision,  
(3) if anything?

(4) A: As I recall, we perfected the tracking  
(5) document so that there was a regular tracking  
(6) report that issued forth from Pepper & Corazzini,  
(7) that there was a much stronger--there were some  
(8) guidelines about what was supposed to be on that  
(9) tracking report, who was going to verify the data  
(10) on that tracking report.

(11) There was during this time a compliance  
(12) procedure being written. I don't remember the date  
(13) that was issued, but in the background a compliance  
(14) procedure was being written and a checklist  
(15) developed as to what steps would be taken before  
(16) any license would be even applied for, let alone  
(17) any site activated.

(18) There was training going on of people.  
(19) There was an ongoing audit, I believe, at  
(20) this time that delved further into what might have  
(21) been the causes of the problem.

(22) So there was a good deal of activity going

Page 168

(1) on to make sure this kind of thing didn't happen  
(2) again.  
(3) Q: In terms of the revision of the data part  
(4) of this sentence on Exhibit 2--forgive me if I  
(5) asked this before in a different way, but to your  
(6) knowledge, was there a further updated or revised  
(7) or reformatted version of this Price Exhibit 3?  
(8) A: There may have been a subsequent rendition  
(9) of this, but I don't recall.  
(10) Q: Do you remember what was attached to the  
(11) memorandum that's been marked as Price Exhibit 2,  
(12) if anything?  
(13) A: I believe you asked me that when we  
(14) speculated it was probably Price Exhibit 3 which  
(15) seemed to flow logically from it.  
(16) Q: But the question I intended was aside from  
(17) what you believe is probably Price Exhibit 3, is  
(18) there anything else that you recall that would have  
(19) been attached to this memorandum?  
(20) A: No.  
(21) Q: Let me ask about this memorandum  
(22) specifically. How do you generate the first drafts

Page 169

(1) of your memoranda? Do you write them out in  
(2) longhand? Dictate them? Type them into the  
(3) computer? What process did you use?  
(4) A: I generally dictate.  
(5) Q: And you give the tape to the secretary?  
(6) A: No. I do it in real time.  
(7) Q: I see. The secretary is in the room with  
(8) you?  
(9) A: That's correct.  
(10) Q: Does the secretary take it down in  
(11) shorthand, or does she or he type it out?  
(12) A: She dictates it out in some kind of hand,  
(13) short, long or otherwise in between. Never looked  
(14) over her shoulder, to tell you the truth.  
(15) Q: And then after she types the document,  
(16) does she use a PC, a personal computer?  
(17) A: Yes.  
(18) Q: Then she brings you a draft for you to  
(19) approve or edit?  
(20) A: That's correct.  
(21) Q: Now, with respect to this Exhibit 3, do  
(22) you know if your secretary was the person who

Page 170

(1) actually performed the inputting, if you will, of  
(2) this data in some sort of format into a computer?  
(3) A: I don't know if her computer or if she or  
(4) her computer did the formatting. Normally she  
(5) wouldn't be doing charts and graphs, so I suspect  
(6) it wasn't, but I don't know for sure. It arrived  
(7) on my desk this way. Whether her machine prepared  
(8) it this way, I don't know.  
(9) Q: Okay. Did you prepare this chart in any  
(10) kind of handwritten way? Did you fill in the  
(11) blanks?  
(12) A: No, I didn't.  
(13) Q: Do you know how this information actually  
(14) got into this chart?  
(15) A: I believe the management discussed what  
(16) should be on that tracking chart or that updating  
(17) chart, perk chart--call it what you want--flow  
(18) chart. Someone put it in that format, either my  
(19) secretary or someone else.  
(20) Q: But, for example, the information itself,

Page 171

(1) particular piece of information, would you have  
(2) dictated that to your secretary or would you have  
(3) given her a piece of paper that said that?  
(4) A: Something that detailed would have  
(5) probably come from the person responsible for that  
(6) piece, so I suspect there would be some  
(7) transmission from Pepper & Corazzini that would say  
(8) here is that piece of it, and then marketing would  
(9) supply another piece of it. I believe that's how  
(10) it would come in. I'm guessing, but I believe  
(11) that's how it would logically come in.  
(12) Q: And then the person actually preparing  
(13) this document would move that information into the  
(14) document?  
(15) A: That's correct. I didn't do it.  
(16) Q: You didn't do it yourself?  
(17) A: No.  
(18) MR. BECKNER: I would like the Court  
(19) Reporter to mark as an exhibit this document and  
(20) then show it to the witness.  
(21) (Price Exhibit No. 4 was  
(22) marked for identification.)

Page 172

(1) (Document handed to the witness, and  
(2) witness reviews document.)  
(3) BY MR. BECKNER:  
(4) Q: Mr. Price, you have been handed a document  
(5) that has been marked as Exhibit 4 to your  
(6) deposition. It's a one-page document with  
(7) production number 10168.  
(8) A: Yes, I reviewed it.  
(9) Q: Okay. Can you just tell me what this  
(10) document is generically.  
(11) A: It appears to be a list of faxes or mail I  
(12) received on July 19, 1995.  
(13) Q: Was it your practice in 1995 to have this  
(14) kind of document prepared every business day?  
(15) A: No, it was not. Generally it wouldn't be  
(16) necessary if I were in town. Often if I were  
(17) traveling, it would be faxed to me somewhere so I  
(18) would know what was on my desk. Otherwise, I  
(19) wouldn't need to know. It would be sitting there.  
(20) Q: So your assumption is you were out of the  
(21) office on July 19, 1995?  
(22) A: It looks that way. I generally get this

Page 173

(1) kind of report if I'm not there simply to go  
(2) through the mail that day.  
(3) Q: Drawing your attention to the middle of  
(4) the document, there is under the general heading  
(5) "mail," there is Ed Foy and there is re: suspended  
(6) billing notice, FCC matter, revision of form letter  
(7) to tenants.  
(8) A: Right.  
(9) Q: Do you know what that refers to?  
(10) A: I believe looking at the date in  
(11) referencing our prior discussion, when we learned  
(12) that there were unauthorized paths that we were  
(13) serving, we made a decision to suspend the billing  
(14) for those properties to as close a time as we could  
(15) from when we learned about it.  
(16) So until the matter was resolved and we  
(17) did have proper authority from that point forward,  
(18) we wouldn't be asking our subscribers to carry the  
(19) burden until we were properly authorized or subject  
(20) ourselves to any kind of action.  
(21) Q: Let me ask you to take a look at

Page 174

(1) MR. SPITZER: It's page 105.

(2) THE WITNESS: Yes.

(3) BY MR. BECKNER:

(4) Q: The first question I want to ask you is  
(5) you recall having seen a copy of--there are two  
(6) pages to Exhibit 29, and I will ask you about the  
(7) first page first.

(8) A: Yes.

(9) Q: First, do you recall having seen a copy of  
(10) the first page of Exhibit 29? That's the--

(11) A: Not specifically, but I remember there was  
(12) an exchange of correspondence on this subject.

(13) Q: Directing your attention to the second  
(14) page of Exhibit 29, is that your signature there  
(15) next to the typed name Edward L. Milstein?

(16) A: Yes, it is.

(17) Q: So I take it that you wrote this  
(18) memorandum?

(19) A: Yes.

(20) Q: Directing your attention to the memorandum  
(21) that you wrote that's on the second page, what was  
(22) it that you meant when you said, (reading) our

Page 175

(1) problem in these four buildings occurred afterwards  
(2) so the credit occurs at a later date?

(3) A: I don't recall what that meant. As I told  
(4) you, we were trying to analyze when the problems  
(5) occurred, trying to pinpoint when we first learned  
(6) about this and not charge those buildings going  
(7) forward. Why these four buildings would be  
(8) different, I don't know. It might have to do with  
(9) the fact that they were blank on the "A" list and  
(10) there was a definite--absolutely different problem  
(11) with them. I can't piece it together for you.

(12) It was a good-faith attempt not to bill  
(13) for service which was not authorized, and why there  
(14) was a slight difference between four properties and  
(15) the others, I don't know.

(16) Q: Now, I take it from both your memorandum  
(17) and Ms. Rosenberg's memo, that for certain  
(18) buildings, the bills were suspended as of June 15;  
(19) is that correct?

(20) A: That's correct.

(21) Q: And then for these four, it was as of  
(22) July 1?

Page 176

(1) A: That's correct. It may be that we missed  
(2) these four on the first pass and caught up with  
(3) them after the billing cycle was complete. I think  
(4) it had to do with more of administration than  
(5) anything very strategic, but I don't recall.

(6) Q: I would like you to take a look at  
(7) Exhibit 20 to Mr. Foy's deposition.

(8) (Witness reviews document.)

(9) Q: That's just a one-page document.

(10) A: Yes.

(11) Q: Do you recall receiving that memo from  
(12) Mr. Foy?

(13) A: Not precisely, no, but I presume I did if  
(14) it says I did.

(15) Q: And do you recall, was the Cornell Club  
(16) one of the buildings that had been served without a  
(17) license?

(18) A: I believe so.

(19) Q: And that's why the billing was suspended  
(20) on July 1?

(21) A: I presume so, yes. Those were the only  
(22) buildings we suspended the billing for.

Page 177

(1) Q: Finally, I want to show you Exhibit 4 to  
(2) Ms. Ceccarelli's deposition, which I think I have  
(3) the original here.

(4) (Document handed to the witness, and  
(5) witness reviews document.)

(6) Q: Can you identify that letter?

(7) A: Yes.

(8) Q: Would you tell me what it is.

(9) A: It appears to be the notice that was sent  
(10) by the marketing people, director of marketing in  
(11) this case, to buildings where we had discontinued  
(12) the billing in light of this problem, and we were  
(13) advising them of what they had done so they  
(14) wouldn't throw checks at us if they get a bill.

(15) Q: I take it this was a form letter that was  
(16) used for all the buildings; is that correct?

(17) A: It appears to be. Whether this is the  
(18) same letter used for all the buildings, I don't  
(19) know, but that appears to be the general letter  
(20) that was sent out.

(21) Q: Did you review the text of that letter  
(22) before it was sent out?

Page 178

(1) A: Yes, I did.

(2) Q: Do you recall reviewing the text of any  
(3) other letter or any different letter?

(4) A: I may have, but I don't recall.

(5) Q: And I take it you don't know whether or  
(6) not some buildings receive a different letter than  
(7) the one you are looking at?

(8) A: This would appear to be the general letter  
(9) which would fit all buildings, but not necessarily,  
(10) for example. It says during this period Pay Per  
(11) View movies will be temporarily unavailable. If we  
(12) had commercial buildings like the Cornell Club  
(13) where we suspend the billing, we don't think they  
(14) were tuning in to Pay Per View movies. They  
(15) probably got a different letter, but the same  
(16) thought would apply.

(17) Q: Aside from the language which is used in  
(18) Ceccarelli Exhibit 4, "due to a licensing matter we  
(19) are presently resolving with the Federal  
(20) Communications Commission," did Liberty ever tell  
(21) any of the buildings that were affected that, in  
(22) fact, it had been serving those buildings without

Page 179

(1) the required microwave license?

(2) A: We had lengthy discussions with some of  
(3) these buildings, and some of them, I think, were  
(4) aware in greater detail of the problem, others not.  
(5) But their issue wasn't so much what the problem  
(6) was. It was simply would they continue to get  
(7) service and how long was the free period, practical  
(8) things rather than legal or regulatory issues.

(9) Since Time Warner was having a dialogue  
(10) with all of our buildings, certainly before our  
(11) contract, during our contract period, and very  
(12) often after we activated buildings, Time Warner  
(13) would call up and spend a good deal of time trying  
(14) to convince them to unwind our contract. It  
(15) wouldn't surprise me if they were filled in quite  
(16) nicely by our competition about any question about  
(17) our licenses.

(18) Time Warner went out of their way to send  
(19) letters to most of our prospective customers  
(20) talking at length about our licensing issues.

(21) Q: But in terms of what Liberty told them,  
(22) this Exhibit C, with some modifications to reflect

Page 180

(1) the kind of service you were providing--that is,  
(2) commercial versus residential--was the single  
(3) uniform written notification that Liberty gave?  
(4) A: No, I didn't say that.  
(5) Q: Let me ask it then.  
(6) A: It was the general notification. There  
(7) might have been others, I don't know, but that was  
(8) the general message we sent out.  
(9) Q: And do you recall seeing any other written  
(10) communication on this subject to the affected  
(11) buildings?  
(12) A: There may have been buildings that asked  
(13) for more specifics. Whether Bertina did that  
(14) verbally or I did, or we referred it to counsel,  
(15) I'm sure there were questions on exactly what they  
(16) were from which building. To whom the questions  
(17) went, I don't know.  
(18) Q: When you say verbally, do you mean--  
(19) A: In response to the letter.  
(20) Q: Just an oral conversation?  
(21) A: Yes.  
(22) MR. BECKNER: I would like this document

Page 181

(1) marked as an exhibit, please.  
(2) (Price Exhibit No. 5 was  
(3) marked for identification.)  
(4) (Document handed to the witness, and  
(5) witness reviews document.)  
(6) BY MR. BECKNER:  
(7) Q: Mr. Price, you have been handed what was  
(8) marked as Exhibit 5 to your deposition. I will  
(9) note for the record that it is a copy of the  
(10) Opposition to the Petition to Deny or Condition  
(11) Grant, FCC file numbers 712218 and 712219. And  
(12) there is a transmittal letter from Pepper &  
(13) Corazzini that's also attached to the document.  
(14) A: Yes.  
(15) Q: I would like to direct your attention, if  
(16) I may, to the back of the document. There is a  
(17) declaration of Peter O. Price which was about three  
(18) pages before the end. Do you have that in front of  
(19) you?  
(20) A: Yes, I do.  
(21) Q: Is that your signature?  
(22) A: Yes, it is.

Page 182

(1) Q: Did you review this document in draft  
(2) before it was filed, sir?  
(3) A: I believe I did.  
(4) Q: Was there a draft of this document sent up  
(5) to you in your office in New York either by  
(6) overnight or facsimile?  
(7) A: I believe it was.  
(8) Q: And I note that your declaration appears  
(9) to be a reproduction of a facsimile?  
(10) A: That could very well be.  
(11) Q: Can you recall whether or not you faxed  
(12) your signature back on the 25th of April?  
(13) A: If it says that, I presume I did.  
(14) Q: Now, on April 5th, 1995, did you have any  
(15) knowledge that Liberty was operating microwave  
(16) paths without FCC licenses?  
(17) A: No, I did not.  
(18) Q: Do you remember whether or not the  
(19) information that you previously testified to, the  
(20) suggestion that you previously testified, there had  
(21) come to you a suggestion that Liberty was operating

Page 183

(1) came before or after April 5th, 1995, the date you  
(2) executed this declaration that you are looking at  
(3) here?  
(4) A: I don't recall the precise date.  
(5) Q: And you can't say whether it was before or  
(6) after the date that you signed this declaration?  
(7) A: I would have to read this again in detail  
(8) and look at whatever else was going on at that  
(9) time, but I just can't pick it out cold.  
(10) I could tell you this: I did not know we  
(11) were operating unlicensed paths. And if I did, I  
(12) would have done something about it immediately. So  
(13) if you're asking me, is there something I said here  
(14) that was a denial that we were doing something  
(15) wrong and I knew we were doing something wrong,  
(16) that's not correct, and I don't like the inference.  
(17) Q: I'm not asking you that, sir.  
(18) A: If that's what you're asking, that's the  
(19) answer. If you're not asking that, I apologize.  
(20) Q: I don't think this document says anything  
(21) about--  
(22) A: I didn't read the document. I want to

Page 184

(1) make sure because I haven't read it.  
(2) (Price Exhibit No. 6 was  
(3) marked for identification.)  
(4) Q: Mr. Price, you have been handed what's  
(5) been marked for your deposition as Exhibit 6. And  
(6) for the record it is a copy of opposition to  
(7) Petition to Deny or Condition Grant in FCC file  
(8) number 712203 and 711937.  
(9) A: Yes.  
(10) Q: I will represent to you just in the  
(11) interest of speeding up time that I think this  
(12) document appears to be substantially identical to  
(13) the previous one you looked at, with the change of  
(14) a few addresses.  
(15) A: I will accept that.  
(16) Q: And again, there is what appears to be a  
(17) copy of a facsimile declaration of Peter O. Price  
(18) on the back of the document which I would like you  
(19) to just look at and confirm as your signature.  
(20) A: That is my signature.  
(21) Q: And it's dated 5/1/95?  
(22) A: That's correct.

Page 185

(1) Q: And again, just for the record, I take it  
(2) that before you executed the declaration, you  
(3) reviewed this document in draft form?  
(4) A: Yes.  
(5) Q: And finally, I want to ask you whether or  
(6) not you recall knowing on May 1st, 1995, whether or  
(7) not Liberty was operating any unlicensed microwave  
(8) paths.  
(9) A: I don't know without going back into the  
(10) record exactly when these meetings took place when  
(11) we made those discoveries.  
(12) Q: I don't have anymore questions about this  
(13) document, unless looking at it refreshes your  
(14) recollection in any way.  
(15) A: No.  
(16) (Price Exhibit No. 7 was  
(17) marked for identification.)  
(18) Q: You have been handed what's been marked as  
(19) Exhibit 7 to your deposition. It is the surreply  
(20) of Liberty Cable Company in file numbers 712218 and  
(21) 712219. Take your time to look at it, and I'm

Page 186

(1) the previous documents.  
(2) (Document handed to the witness, and  
(3) witness reviews document.)  
(4) A: All right.  
(5) MR. SPITZER: Should the witness take the  
(6) time to read this document with care, or is the  
(7) question going to pertain more to identifying the  
(8) signature or issues of that nature?  
(9) MR. BECKNER: I'm going to ask him a  
(10) little bit more about this document than the  
(11) previous two, so if he wants to take his time to  
(12) read it, that's okay.  
(13) (Witness reviews document.)  
(14) THE WITNESS: Yes, I have reviewed it.  
(15) BY MR. BECKNER:  
(16) Q: All right, sir. If you go back to the  
(17) very first page of the document, the second  
(18) paragraph says, (reading) Time Warner alleges in  
(19) its reply that Liberty has installed OFS receive  
(20) sites--and it gives two addresses--and commenced to  
(21) provide service to both locations. Liberty did, in  
(22) fact, construct those sites and has been providing

Page 187

(1) service as alleged. And there is a citation,  
(2) Exhibit 1, affidavit of Peter O. Price.  
(3) If you turn to the back of the document,  
(4) there is something called Exhibit 1, declaration of  
(5) Peter O. Price, which I take is your signature?  
(6) A: Yes, it is.  
(7) Q: On May 17?  
(8) A: Yes.  
(9) Q: So it would be fair to say, then, that as  
(10) of May 17, you knew that Liberty was providing  
(11) service without a license to these sites identified  
(12) in this pleading?  
(13) A: That is correct.  
(14) Q: Now, the previous document we looked at,  
(15) which you verified on May 1st, I think you  
(16) testified that as of that date, you did not know of  
(17) any such unlicensed operation.  
(18) A: I didn't say that.  
(19) MR. SPITZER: I believe the record will  
(20) speak for itself, but I believe the witness's  
(21) statement was that he didn't believe he knew but  
(22) that he could not determine with finality without

Page 188

(1) delving into other pieces of evidence that may or  
(2) may not be available.  
(3) MR. BECKNER: Okay.  
(4) BY MR. BECKNER:  
(5) Q: As far as you can determine, sitting here  
(6) today, without access to everything that might be  
(7) in the files, and based on your own recollection,  
(8) on May 1st when you verified this Price Exhibit 6,  
(9) as far as you can determine, you did not know?  
(10) A: That's correct, as far as I can determine.  
(11) Q: So, would it be fair to say, then, that  
(12) sometime between May 1st and May 17 is when you  
(13) came to know that Liberty was operating unlicensed  
(14) microwave paths?  
(15) A: I think that's a fair conclusion.  
(16) Q: Now I would like you to take a look at the  
(17) second page of Exhibit 7. That's the surreply, and  
(18) that contains there in the first full paragraph a  
(19) list of other addresses.  
(20) A: Yes.  
(21) Q: And I take it that it was determined that  
(22) microwave service to these other addresses listed

Page 189

(1) here on page two was also being done without an FCC  
(2) license; isn't that correct?  
(3) A: That's correct.  
(4) Q: Do you know how the information that is  
(5) contained in pages one and two of Exhibit 7 was  
(6) compiled or assembled? That is, the list of sites  
(7) with unlicensed applicants?  
(8) A: I believe this is the result of diligence.  
(9) We started internally to determine, as I mentioned  
(10) before, to reconcile our paperwork with our active  
(11) installations.  
(12) Q: Now, the first page of the surreply  
(13) mentions a May 5th reply submitted by Time Warner.  
(14) A: Right.  
(15) Q: Which apparently makes the allegation that  
(16) Liberty was operating OFS receive sites without  
(17) licenses.  
(18) A: Yes.  
(19) Q: Was that the document which, to your  
(20) knowledge, triggered your review and inquiry into I  
(21) think what you described as reconciliation of your  
(22) paperwork?

Page 190

(1) A: I believe it was, but I can't say it was  
(2) the document that may well have triggered it.  
(3) Q: By the way, did your FCC counsel routinely  
(4) send to you copies of the various pleadings that  
(5) were filed both by him and by other parties in this  
(6) application proceeding of 1995?  
(7) A: Yes.  
(8) Q: Now, I would like you to take a look at  
(9) page three of the surreply and the middle of the  
(10) second full paragraph.  
(11) Have you had a chance to read that  
(12) paragraph that begins "application processes"?  
(13) A: Yes.  
(14) Q: In the middle of the paragraph there is  
(15) the sentence that reads, (reading) to compound the  
(16) situation, the administration department failed to  
(17) notify Mr. Nourain that grant of Liberty's  
(18) applications was being held up indefinitely as a  
(19) result of the Time Warner petitions.  
(20) Do you know what department that sentence  
(21) is referring to?  
(22) A: The Administrative Services Department was

Page 191

(1) run by Janet Hartley, and I think it refers to the  
(2) fact they tended to circulate a lot of the  
(3) paperwork within the company that the duplication  
(4) and the transmittal of documents for meetings and  
(5) setting of agendas and that kind of thing, office  
(6) services.  
(7) Q: Do you know where the information came  
(8) from that's reported in this paragraph that we have  
(9) been talking about?  
(10) A: Which information is that?  
(11) Q: Well, for example, the statement in the  
(12) sentence I just read, that is, that the  
(13) administration department failed to notify  
(14) Mr. Nourain.  
(15) A: I believe it came out of our meetings  
(16) trying to get to the bottom of where the foulups  
(17) were in the communications process, putting our  
(18) heads together and trying to piece together where  
(19) the communication problem was, who didn't know what  
(20) and why and what should be done about it.  
(21) There is a great deal of paperwork moving  
(22) in different directions among several different

Page 192

(1) people between Washington and three different  
(2) locations in New York, and that's what we were  
(3) trying to get to the bottom of, was getting  
(4) everybody, I think I referred to, reading off the  
(5) same page, or something like that, so we wouldn't  
(6) trip over.

(7) Q: The statement Mr. Nourain was unaware of  
(8) the petitions until late April of 1995, and then  
(9) there is a reference to Exhibit 2 which is a  
(10) declaration of Mr. Nourain, aside from  
(11) Mr. Nourain's declaration which was attached to  
(12) this pleading, did you have any independent  
(13) knowledge that Mr. Nourain was unaware of the  
(14) petitions against Liberty's applications until late  
(15) April of 1995?

(16) A: No, I do not.

(17) Q: Did you discuss with Mr. Nourain in the  
(18) period which led up to the preparation of this  
(19) pleading that we are looking at, what he knew and  
(20) didn't know regarding the status of Liberty's  
(21) applications?

(22) A: Yes. We started to delve into, and it was

Page 193

(1) really the beginning of getting to the bottom of  
(2) this early on in the process, and we talked about  
(3) that, or at least collectively we talked about it.

(4) Q: Okay. But I intended by my question to  
(5) focus specifically on you, whether or not you  
(6) personally discussed with Mr. Nourain what he knew  
(7) or didn't know.

(8) A: We had several meetings about Tony  
(9) Ontiveros, Behrooz, John Tenety, Bertina  
(10) Ceccarelli, all of those involved trying to sort  
(11) out what the foulups were and why they occurred, so  
(12) yes, I did.

(13) Q: That's what I want to find out as opposed  
(14) to you getting a report from someone else.

(15) A: I jumped into it, and wanted to get to the  
(16) bottom of it, believe me. I did not take this  
(17) lightly.

(18) Q: As part of the process of fact gathering  
(19) which resulted in this pleading that we are looking  
(20) at which has been marked as Exhibit 7 to your  
(21) deposition, did people at Liberty attempt to match  
(22) up operational microwave paths or addresses of

Page 194

(1) buildings served by microwave with FCC licenses?

(2) A: Yes, I believe I just mentioned that  
(3) process we were going through.

(4) Q: Going back to page three of the document,  
(5) the surreply, the first sentence of the paragraph  
(6) that we have been discussing which says, (reading)  
(7) application processing for each of the  
(8) above-referenced sites has exceeded the norm due to  
(9) the frequency coordinator's use of incorrect  
(10) emission designators.

(11) Was that identified as the reason why  
(12) every one of these applications was delayed, or was  
(13) that just a reason why some of them were delayed,  
(14) if you know?

(15) A: I think it says that's the reason why some  
(16) of them were delayed. If you read the context,  
(17) that's one of the problems we faced. I referred  
(18) earlier in my comments about frequency  
(19) coordination. There would sometimes be incorrect  
(20) designations, and we would have to reapply for  
(21) things that had already been applied for for

Page 195

(1) Q: The reason I asked you, sir, is the term  
(2) "each" is in this document here. It was a little  
(3) ambiguous as to what "each" refers to.

(4) A: It may refer to the two paths rather than  
(5) the original paths.

(6) Q: You just don't know?

(7) A: I don't know.

(8) Q: That's fine. Now, this surreply  
(9) identifies a total of 15 sites that you activated  
(10) unlicensed microwave paths. They are the two  
(11) mentioned on page one and 13 on page two.

(12) A: Correct.

(13) Q: Were those the 15 sites for which billing  
(14) was suspended on June 15th?

(15) A: I believe that's correct.

(16) Q: Do you know the reason why the billing for  
(17) those 15 addresses was suspended not quite a month  
(18) after this pleading was filed as opposed to sooner?

(19) A: I think my guess is they would already  
(20) have been billed and missed the billing cycle. I  
(21) think it was more administrative. I think we made  
(22) a good-faith effort to stop the billing as soon as

Page 196

(1) we knew without disrupting the--without having to  
(2) go back and complicate people's lives.

(3) Q: Does Liberty bill a customer on the first  
(4) of the month, or is the billing staggered?

(5) A: I believe it's the first of the month.

(6) Q: So everybody gets a bill on the first of  
(7) the month?

(8) A: Right.

(9) Q: As far as you know, was this surreply, did  
(10) it reflect Liberty's best efforts to obtain  
(11) whatever information was available regarding  
(12) activation of unlicensed paths as of the date it  
(13) was filed?

(14) A: As of the day it was filed, but the effort  
(15) was ongoing at that point.

(16) MR. SPITZER: Off the record for a second?

(17) MR. BECKNER: Yes.

(18) (Discussion off the record.)

(19) MR. BECKNER: Would you read back the last  
(20) question and answer.

(21) (Whereupon, the Court Reporter read back  
(22) the requested portion of the record.)

Page 197

(1) MR. BECKNER: I would like you to mark  
(2) this.

(3) (Price Exhibit No. 8 was  
(4) marked for identification.)  
(5) (Document handed to the witness.)

(6) BY MR. BECKNER:

(7) Q: You have been handed what was marked as  
(8) Exhibit 8 to your deposition. It's a copy of a  
(9) two-page letter addressed to Michael Hayden at the  
(10) FCC and dated June 16, 1995, and appears to have  
(11) your signature on the second page.

(12) A: Right. Correct.

(13) Q: Again I would like you to verify for us  
(14) that that is, in fact, your signature on page two  
(15) of the letter.

(16) A: Yes.

(17) Q: Did you write this letter?

(18) A: Yes.

(19) Q: Now, do you recall reviewing the letter of  
(20) counsel that's described as an attachment to your  
(21) letter on the very first sentence of Exhibit 8?

Page 198

(1) about the letter of June 9?  
(2) Q: Yes.  
(3) Attached to this letter is Liberty's  
(4) response by counsel to the question asked in your  
(5) letter dated June 9, and what I would like to know  
(6) is whether or not Liberty's response by counsel  
(7) which you say was attached to this letter, whether  
(8) or not you reviewed that document.  
(9) MR. SPITZER: At what point in time?  
(10) MR. BECKNER: Before it was sent out.  
(11) MR. SPITZER: On or about June 16th?  
(12) MR. BECKNER: Yes.  
(13) THE WITNESS: Right. I presume I did.  
(14) BY MR. BECKNER:  
(15) Q: It would have been your practice to do  
(16) that?  
(17) A: It was my practice, sure.  
(18) Q: And as far as you knew, that response was  
(19) complete as of June 16th?  
(20) A: I don't know. That response being the  
(21) letter of June 9?  
(22) MR. SPITZER: Counsel's letter?

Page 199

(1) MR. BECKNER: Counsel's letter.  
(2) THE WITNESS: I can't speak for counsel.  
(3) Ask counsel.  
(4) BY MR. BECKNER:  
(5) Q: So you're not willing to say whether or  
(6) not Liberty's response by its counsel was or was  
(7) not complete when it was sent on June 16th?  
(8) MR. SPITZER: I think it's an unfair  
(9) question to the witness because that response isn't  
(10) in front of him. The letter speaks for itself. It  
(11) says it's attached to the letter June 16. To ask  
(12) him now whether he reviewed it or whether it was  
(13) accurate, isn't really fair.  
(14) THE WITNESS: I can't answer the question.  
(15) I think I said that.  
(16) BY MR. BECKNER:  
(17) Q: That's fine. And that's your answer.  
(18) A: That's my answer.  
(19) Q: Now, directing your attention to the first  
(20) long paragraph on Price Exhibit 8, there is a  
(21) sentence that says, (reading) a complete  
(22) investigation of the administrative foulup is

Page 200

(1) currently being conducted by outside counsel.  
(2) Is that what later came to be known as the  
(3) Internal Audit Report?  
(4) A: Yes.  
(5) Q: You're describing what the investigation  
(6) that led to that report was?  
(7) A: That's correct.  
(8) Q: And I take it from the second page of this  
(9) letter at the top of the letter that this  
(10) announcement was the commencement of suspension of  
(11) billing for the buildings that were affected by  
(12) these paths?  
(13) A: That what was?  
(14) MR. SPITZER: What was the predicate to  
(15) this announcement?  
(16) BY MR. BECKNER:  
(17) Q: The announcement at the top of the second  
(18) page, (reading) as of this date and until the  
(19) matter is resolved, Liberty will not charge for the  
(20) service provided to these buildings.  
(21) A: This is the announcement of that fact to  
(22) the FCC.

Page 201

(1) Q: Correct.  
(2) A: Yes. I believe this is the first time we  
(3) told the FCC that.  
(4) Q: Do you know if you told the affected  
(5) buildings that they would be billed prior to June  
(6) 16?  
(7) A: I would have to refer back to Bertina  
(8) Ceccarelli's notice to tenants, whenever that was.  
(9) I presume that was the accurate date.  
(10) Q: I'm going to show you again Exhibit 4  
(11) which you have seen previously. Exhibit 4 to  
(12) Ms. Ceccarelli's deposition. That form letter is  
(13) dated simply July 1995.  
(14) A: Right.  
(15) Q: And the question I would like you to tell  
(16) me is whether or not you know whether notification  
(17) of the buildings went out before July 1995.  
(18) A: No, but that probably has to do with the  
(19) internal memoranda with Anne Rosenberg about the  
(20) June 15th date. I believe it was an attempt to  
(21) reconcile the June 15th date with the cessation of  
(22) billing with our commitment to the FCC to make the

Page 202

(1) two congruent. I just surmise that from the dates  
(2) in what was being attempted here.  
(3) (Counsel confers with the witness.)  
(4) Q: I take it that at the time that you sent  
(5) Mr. Hayden this letter, which is Exhibit 8, that 15  
(6) was the number of buildings that Liberty was  
(7) serving by unlicensed microwave paths that you knew  
(8) about?  
(9) A: That I knew about were the operative  
(10) words.  
(11) Q: And had you known about anymore--  
(12) A: I would have certainly have told them and  
(13) followed the same procedure, yes. This was not our  
(14) attempt to cut corners or to not do the right  
(15) thing. We were trying to resolve a problem we knew  
(16) we had in a forthright way and try to get out of it  
(17) and set it right.  
(18) And if it were 14 buildings or 26  
(19) buildings, it would have done the same thing.  
(20) Q: In the June-July 1995 period, was there  
(21) any one person at Liberty who would order a  
(22) frequency coordination study?

Page 203

(1) MR. SPITZER: At the exclusion of others?  
(2) MR. BECKNER: Yes.  
(3) THE WITNESS: I believe it was generally  
(4) the Engineering Department, as I understand it.  
(5) BY MR. BECKNER:  
(6) Q: And that would have probably been Behrooz  
(7) Nourain?  
(8) A: Correct.  
(9) I certainly never had any contact with  
(10) Comsearch. Perhaps other people in engineering or  
(11) operations did, but I never did, and marketing  
(12) never did, so I presume it operated there  
(13) somewhere.  
(14) Q: Now, in the course of your fact gathering  
(15) that you testified you did around circumstances of  
(16) these unlicensed activations, did you happen to  
(17) make any determination as to how long it took  
(18) Comsearch to do a frequency coordination study once  
(19) they were asked to do one?  
(20) A: From my understanding, it was about 30  
(21) days. I never asked them, but the operations  
(22) people that were involved, I believe it was around

Page 204

[1] 30 days. It could have been 45, but I think it was  
[2] 30.  
[3] Q: I would like you to take a look at Price  
[4] Exhibit 3 again. That's the table, the list.  
[5] A: Yes.  
[6] Q: You will notice the path coordination date  
[7] for four of the five buildings at the top of the  
[8] list, excluding 30 Waterside Plaza is given as July  
[9] 3rd, 1995. Do you see that?  
[10] A: Yes, I do.  
[11] Q: So, based on your previous testimony,  
[12] would it be reasonable to assume that these  
[13] coordination studies were requested sometime before  
[14] July 3rd, 1995?  
[15] MR. SPITZER: I think previous testimony  
[16] referred to was that the witness wasn't clear  
[17] whether that path coordination date referred to the  
[18] date coordination was requested, the date that it  
[19] was completed. I believe that he was uncertain  
[20] about that.  
[21] THE WITNESS: That's certainly correct.  
[22] MR. SPITZER: So I don't think your

Page 205

[1] question is properly framed.  
[2] THE WITNESS: I don't know whether this is  
[3] a date that someone was asked to make a path  
[4] coordination, the date they completed it, the date  
[5] they submitted it. I don't know. I wasn't  
[6] involved in that part of the activity.  
[7] MR. BECKNER: We need to take a break.  
[8] (Brief recess from 5:40 p.m. to 6:05 p.m.)  
[9] MR. BECKNER: Let's go ahead and mark  
[10] this.  
[11] (Price Exhibit No. 9 was  
[12] marked for identification.)  
[13] BY MR. BECKNER:  
[14] Q: Mr. Price, you have been handed a copy of  
[15] what has been marked Exhibit 9. It's a copy of an  
[16] affidavit filed by Lloyd Constantine with the FCC,  
[17] dated 20 September 1995. And then behind that  
[18] there is a fairly short affidavit that appears to  
[19] have your signature on it.  
[20] A: Yes, that's my signature.  
[21] Q: I'm going to ask you a few questions about  
[22] the affidavit, so take whatever time you want to

Page 206

[1] look at it.  
[2] A: Yes.  
[3] Q: Okay. The first question is do you know  
[4] whether or not you have seen Mr. Constantine's  
[5] affidavit before today? And just so there is no  
[6] sense that I'm being unfair to you here, I recall  
[7] that this was submitted as part of what's called an  
[8] application for review with the Commission, and  
[9] your affidavit is hung on to the back of this. I  
[10] don't know whether, in fact, it should be or not.  
[11] MR. SPITZER: The affidavit of Mr. Price,  
[12] I want to clarify this, to your knowledge, was not  
[13] appended to Lloyd Constantine's affidavit?  
[14] MR. BECKNER: No.  
[15] MR. SPITZER: It was attended to another  
[16] document.  
[17] MR. BECKNER: The application for review  
[18] of the Commission's decision regarding the  
[19] confidential treatment of the Internal Audit  
[20] Report, and Mr. Constantine's report was attached  
[21] to that application.

Page 207

[1] for review itself?  
[2] MR. BECKNER: That's correct.  
[3] THE WITNESS: I can't say for certain  
[4] whether I have seen this or not.  
[5] BY MR. BECKNER:  
[6] Q: Was Mr. Constantine one of the lawyers  
[7] that Liberty retained to investigate the  
[8] circumstances surrounding the activation of  
[9] unlicensed microwave paths?  
[10] A: His firm.  
[11] Q: His firm was?  
[12] A: Yes.  
[13] Q: Do you know in particular whether or not  
[14] Mr. Constantine himself participated personally in  
[15] the investigation?  
[16] A: I do not know.  
[17] Q: Now, paragraph three of Mr. Constantine's  
[18] affidavit, he says, (reading) in late April 1995,  
[19] Liberty's chairman, Howard Milstein, became aware  
[20] that Liberty was providing service to customers in  
[21] two buildings in New York City, et cetera.  
[22] Do you see that sentence?

Page 208

[1] A: Yes.  
[2] Q: I think we established through your  
[3] testimony that you became aware of the fact that  
[4] Liberty was providing unauthorized service as a  
[5] result of the May 5th filing by Time Warner with  
[6] the FCC.  
[7] A: Yes.  
[8] Q: Is that correct?  
[9] A: That's what I believe. I presume from  
[10] that that was a trigger, yes. I didn't say that  
[11] was the trigger. It was a trigger.  
[12] Q: The question is, to your personal  
[13] knowledge, did you, yourself--meaning Peter Price,  
[14] not necessarily Liberty Cable as an entity--have  
[15] any knowledge prior to hearing or learning of the  
[16] allegations in Time Warner's pleading?  
[17] A: No, I did not. Absolutely, no, I did not.  
[18] Q: Are you aware of whether or not, apart  
[19] from whatever this affidavit says, whether or not  
[20] Mr. Milstein, Mr. Howard Milstein, had any such  
[21] knowledge prior to the filing of Time Warner's  
[22] pleading at the FCC which you said was the

Page 209

[1] beginning of your--  
[2] A: I can't speak for Howard Milstein. I  
[3] don't know.  
[4] Q: But as far as you know you never heard him  
[5] tell you that he knew about this before Time Warner  
[6] filed the pleading?  
[7] A: No.  
[8] Let me just say again for the record that  
[9] we are--we made every effort from the time I joined  
[10] the company, and I believe before it, to abide by  
[11] every regulation there was. We personally lobbied  
[12] for the creation of permission to transmit on this  
[13] frequency and spent a lot of time and money trying  
[14] to do that.  
[15] And to the best of our ability, pioneered  
[16] a very complex set of procedures, of requirements  
[17] that unfolded as procedures to make all this  
[18] happen. It was never our intention to hide from  
[19] the FCC. It was never our intention to hide from  
[20] Time Warner because they literally followed us  
[21] around wherever we went. We advertised what we did

Page 210

(1) morning.

(2) And if there was some slippage by six days  
(3) or whatever, it was in terms of when we knew about  
(4) something and when we did something about it, that  
(5) would be a long time because that was not our  
(6) intention to hide from anybody or to do anything  
(7) wrong.

(8) When we learned there was a problem, we  
(9) did everything we could to fix it and spent as much  
(10) money as we possibly could to find the best people,  
(11) consultants, lawyers, advisors, to set it right.

(12) There was no intent to deceive here.  
(13) There is no intent to deceive now. And if there is  
(14) any implication whatsoever that I or my associates  
(15) had some knowledge or got together in some way to  
(16) cut corners or avoid regulations, that is untrue  
(17) and it is not what we did. And I'm not saying  
(18) you're inferring that, but I want that on the  
(19) record.

(20)  
(21) MR. BECKNER: All right. I will note for  
(22) the record that the witness's statement was not

Page 211

(1) responsive to any question and that I move to  
(2) strike it.

(3) BY MR. BECKNER:

(4) Q: And sir, that's a formality. It's not  
(5) directed personally to you. I want to make that  
(6) clear.

(7) I just want to ask one other question  
(8) about Exhibit 9 to your deposition.

(9) When you executed this verification that  
(10) refers to the application for review itself, I take  
(11) it that what you were referring to was the actual  
(12) document that was filed with the FCC and not any of  
(13) the attachments such as Mr. Constantine's affidavit  
(14) that were included with the document?

(15) A: I believe that's correct, but without  
(16) seeing that application and going through it and  
(17) reviewing all the other documents, I can't say for  
(18) sure.

(19) MR. SPITZER: I want to say for the record  
(20) once again this is not the document as it was  
(21) submitted to the FCC.

(22) MR. BECKNER: I understand that.

Page 212

(1) MR. SPITZER: I just don't want the fact  
(2) this affidavit is now stapled to Constantine's  
(3) three-page affidavit to be misinterpreted.

(4) MR. BECKNER: There is no intent to  
(5) produce such a misinterpretation. I'm simply  
(6) trying to find out what he reviewed, and I think  
(7) he's told me what he's reviewed, as best he can  
(8) recall.

(9) (Price Exhibit No. 10 was  
(10) marked for identification.)

(11) (Document handed to the witness.)

(12) MR. BECKNER: Let the record reflect that  
(13) Mr. Price has been given a copy of what was marked  
(14) as Exhibit 10 to his deposition which is a  
(15) three-page document consisting of a transmittal  
(16) letter dated July 12, 1995, and an attached  
(17) two-page statement of eligibility and use.

(18) (Witness reviews document.)

(19) THE WITNESS: Yes.

(20) BY MR. BECKNER:

(21) Q: All right, sir, again for the record, is  
(22) that your signature on the last page of the

Page 213

(1) exhibit?

(2) A: Yes, it is.

(3) Q: Directing your attention to the concluding  
(4) paragraph of the last page of the exhibit, the last  
(5) sentence of that paragraph begins, "the facilities  
(6) will not be extended by a hard-wire connection," et  
(7) cetera.

(8) What did you intend by that statement,  
(9) sir?

(10) MR. SPITZER: You mean what did he mean?

(11) MR. BECKNER: Yes.

(12) THE WITNESS: I can't state what's more  
(13) than that.

(14) BY MR. BECKNER:

(15) Q: Let me focus your attention on one word.

(16) The statement makes reference to the fact that 170  
(17) West End, 55 Central Park, 150 and 152 West 57th  
(18) Street are presently fed via hard wire connections  
(19) from two other buildings.

(20) And apparently the purpose of the  
(21) reference--

(22) MR. SPITZER: Three other buildings?

Page 214

(1) MR. BECKNER: Right. Three other  
(2) buildings.

(3) BY MR. BECKNER:

(4) Q: The purpose of the referenced applications  
(5) is to replace these hard-wire connections with a  
(6) microwave path.

(7) A: Yes, that appears to be the intent.

(8) Q: When you use the word "facilities" in the  
(9) concluding sentence of the paragraph, can you tell  
(10) me what you meant? What did you mean?

(11) A: The buildings, I presume, is what it  
(12) means, just looking at it. I don't think it means  
(13) the microwave facilities. I think it means the  
(14) buildings. Just the sense of it I get here.

(15) Clearly this was prepared by counsel for particular  
(16) regulatory purpose, so I'm trying to piece together  
(17) what this particular surgical instrument was being  
(18) used for.

(19) Q: I understand that. You probably weren't  
(20) the original author of this document.

(21) A: No. It's a little technical for me, but  
(22) I'm getting there.

Page 215

(1) (Price Exhibit No. 11 was  
(2) marked for identification.)

(3) Q: You are going to have to help me with  
(4) this.

(5) Mr. Price, you have been handed what was  
(6) marked as Exhibit 11 to your deposition, and it is  
(7) a copy of an FCC Form 402 with attachments that  
(8) appears to be filed on behalf of Liberty Cable  
(9) Company, and it's dated July 17, 1995, on the  
(10) second page.

(11) MR. SPITZER: I'm sure I'm missing it, but  
(12) where is the evidence this was the document filed?  
(13) Is there a stamp I'm just not seeing?

(14) MR. BECKNER: I don't know there is a  
(15) stamp. There may have been a transmittal letter  
(16) that had a stamp on it or not. You could dispute  
(17) that this was filed and we could bring the witness  
(18) back next week or something.

(19) MR. SPITZER: No. I was wondering if we  
(20) were missing something. For purposes of this  
(21) deposition, we will accept your representation that  
(22) this was the document that was filed.

Page 216

(1) MR. BECKNER: Tomorrow Mr. Nourain will be  
(2) here and he could authenticate it.  
(3) BY MR. BECKNER:  
(4) Q: I want you to take a look at the Comsearch  
(5) coordination frequency study. It's the very first  
(6) page of the study. You notice the date there is  
(7) 7/3/95?  
(8) A: Right.  
(9) Q: And the question is, is now seeing that  
(10) date, does it cause you to have more certainty  
(11) about the path coordination date that is on the "A"  
(12) list which is the first page of Price Exhibit 3?  
(13) A: Even looking at this, I don't know whether  
(14) it means I got it this date, they issued it this  
(15) date, they did it this date. I know you're on this  
(16) case, but you can't get it out of me because I  
(17) don't know it. Never did know it.  
(18) MR. SPITZER: Could I just ask, what  
(19) receive site does this application relate to?  
(20) MR. BECKNER: I'm not answering the  
(21) questions here.  
(22) THE WITNESS: It would help me to

Page 217

(1) understand what you're asking. I don't know what  
(2) the document is. I don't know what it relates to.  
(3) I have no context for this.  
(4) MR. SPITZER: We don't know if it was a  
(5) filed document. I will accept your representation  
(6) that it was, but if you want us to correlate it on  
(7) a date on this chart, we need to know what address  
(8) it relates to. We know it's latitude 40, 47,  
(9) 3.0—a bunch of numbers, but we know the latitude  
(10) and longitude. I'm not sure we know what building  
(11) that is.  
(12) MR. BECKNER: Attachment one, Path C.  
(13) MR. SPITZER: Right.  
(14) MR. BECKNER: That refers to 38 East 85th  
(15) Street.  
(16) BY MR. BECKNER:  
(17) Q: You see at the top there it says 38 East  
(18) 85th.  
(19) A: No.  
(20) MR. SPITZER: Is that a multi-page  
(21) document? It's one page.  
(22) THE WITNESS: I'm looking at it.

Page 218

(1) BY MR. BECKNER:  
(2) Q: Look at the second page of that.  
(3) A: Okay.  
(4) MR. SPITZER: I don't see that address on  
(5) the "A" list. I also made note on the first page  
(6) of Price Exhibit 11 it's handwritten but it says  
(7) "add Path F," so I don't know—is there a  
(8) Path F—there is a Path F, but I don't see an  
(9) address.  
(10) MR. HOLT: 35 East appears on the "A" list  
(11) second page and also the first page.  
(12) MR. SPITZER: Correct, but I thought  
(13) Path C was 38.  
(14) THE WITNESS: This is 38 East 85th.  
(15) MR. SPITZER: And this says "add Path F."  
(16) MR. WEBER: It's possible the application  
(17) may have had the wrong address for that path, and  
(18) that's why the Appendix A in the HDO is—  
(19) MR. SPITZER: But it says "add Path F."  
(20) Do we have the Path F address?  
(21) THE WITNESS: This is not easy, gentleman.

Page 219

(1) exactly what we went through, except we went  
(2) through it several hundred times trying to sort it  
(3) out.  
(4) MR. SPITZER: Might I suggest I don't have  
(5) Form 402, but if you put the receive address on  
(6) Form 402, it would make life easier.  
(7) MR. BECKNER: We could move on. I think  
(8) there are unfortunately multiple copies of this  
(9) amendment. Path F is, I found, east 93rd Street,  
(10) according to this document.  
(11) THE WITNESS: I'm lost.  
(12) (Price Exhibit No. 12 was  
(13) marked for identification.)  
(14) (Document handed to the witness, and  
(15) witness reviews document.)  
(16) THE WITNESS: Yes, sir.  
(17) BY MR. BECKNER:  
(18) Q: First, just a simple question as always,  
(19) can you identify your signature on page two of this  
(20) exhibit?  
(21) A: Yes, sir.  
(22) Q: There was on or about the date of this

Page 220

(1) document a change in the business of Liberty Cable  
(2) Company which became known as Bartholdi Cable  
(3) Company, was there not?  
(4) A: Yes.  
(5) Q: But I take it that in your view the change  
(6) in the business was not something that the FCC  
(7) should have been informed about in this document  
(8) here?  
(9) A: What kind of question is that?  
(10) MR. SPITZER: Wait a minute. Let me  
(11) object to that question.  
(12) MR. BECKNER: Read it back.  
(13) (Whereupon, the Court Reporter read back  
(14) the previous question.)  
(15) MR. SPITZER: I instruct him not to answer  
(16) the question. This document speaks for itself. If  
(17) you wish to ask questions of the witness pertaining  
(18) to this document, you could do so. Next question.  
(19) Mr. Beckner, we are trying to give you as  
(20) much latitude as possible, but discovery pertaining  
(21) to the pending motion to enlarge is not permitted.  
(22) MR. BECKNER: That's the basis of your

Page 221

(1) objection and instruction of the witness?  
(2) MR. SPITZER: No.  
(3) MR. BECKNER: I want the record to be  
(4) clear, that's all.  
(5) MR. SPITZER: I instructed him not to  
(6) answer because the question is irrelevant. You  
(7) could restate it in some other way if you wish.  
(8) MR. BECKNER: At least your view is the  
(9) question is not yet a part of the case?  
(10) MR. SPITZER: That's certainly correct,  
(11) that's right.  
(12) MR. BECKNER: I know where the edge is.  
(13) Let me just note for the record, as I have  
(14) in a couple of other instances, that I have some  
(15) other documents here which pertain to that issue,  
(16) and I'm not going to offer those documents to the  
(17) witness, anticipating your objections, along the  
(18) same lines of the objection you made to Exhibit 12,  
(19) so we have that in the record.  
(20) MR. SPITZER: That's fine. I understand  
(21) why you're doing it. We have given you full

Page 222

(1) permitted with respect to the pending motion to  
(2) enlarge. I take no position. I haven't seen these  
(3) documents, so I don't know if I would or would not  
(4) object, so you know my position with respect to  
(5) discovery on the pending motion to enlarge.

(6) MR. BECKNER: Fine. I don't need to take  
(7) the witness's time doing anymore of this record  
(8) making.

(9) THE WITNESS: Thank you.

(10) MR. BECKNER: Let me take about five  
(11) minutes. I think I'm done, and I just want to be  
(12) sure I'm done.

(13) (Brief recess from 6:25 p.m. to 6:30 p.m.)

(14) MR. BECKNER: Mr. Price, just for the  
(15) record, that concludes my examination.

(16) THE WITNESS: Thank you.

(17) MR. BECKNER: And I pass the witness to  
(18) Mr. Weber.

(19) MR. SPITZER: I just note for the record  
(20) it's 6:30.

(21) EXAMINATION BY COUNSEL FOR THE  
(22) FEDERAL COMMUNICATION COMMISSION

Page 223

BY MR. WEBER:

(1) Q: I'm Joseph Weber and I represent the Chief  
(2) of the Wireless Telecommunications Bureau.

(4) A: Good evening.

(5) Q: There has been a lot of discussion so far  
(6) today that there came a time where you learned that  
(7) certain Liberty paths were activated without  
(8) authorization.

(9) Had any action ever been taken against you  
(10) by your superiors, the Milsteins, because of this?

(11) MR. SPITZER: I want to understand, action  
(12) taken against him, do you mean-

(13) MR. WEBER: Any kind of condemnation in  
(14) any way.

(15) THE WITNESS: No.

BY MR. WEBER:

(17) Q: Has any type of action been taken against  
(18) any Liberty employee at all because of paths being  
(19) operated without prior authorization?

(20) A: There were people who were called on the  
(21) carpet for not following up on what should have  
(22) been matters that should have been followed up on

Page 224

(1) for making assumptions that were not realistic, for  
(2) not having a better paper trail kept, for not being  
(3) more diligent. There were criticisms made of  
(4) performance and lapses in compliance procedures.

(5) So internally, yes, we took a lot of stern  
(6) action with people to make sure that there wouldn't  
(7) be reoccurrences of what had occurred and that  
(8) systems were put in place to assure that.

(9) Q: You stated just people.

(10) A: I was just reminded that was reflected in  
(11) performance reviews I wrote which eliminated  
(12) bonuses that would normally be paid to people for  
(13) performance and substandard reviews which were  
(14) given which had not previously been given.

(15) Q: Could you be more specific who these  
(16) people are.

(17) A: Behrooz Nourain was one of them. I  
(18) believe that-I can't recall-there were several  
(19) people. One was Behrooz, another one was Tony  
(20) Ontiveros. He was criticized internally. Those  
(21) responsible for the coordination process of all  
(22) this.

Page 225

(1) Q: Was anybody demoted because of this?

(2) A: Yes. Behrooz Nourain used to be Director  
(3) of Engineering. He did not carry that title  
(4) thereafter, and we brought in a consultant to try  
(5) to sort out what had been done and to make  
(6) recommendations about procedures that should be  
(7) followed or improvements that could be made in the  
(8) system.

(9) Q: When Behrooz or Mr. Nourain was no longer  
(10) titled Director of Engineering, did his duties  
(11) change in any way?

(12) A: Yes, they did. He had been totally  
(13) responsible for all engineering at that point and  
(14) afterward. That would mean for dealing with the  
(15) path coordination matters, dealing with FCC rule  
(16) making issues, dealing with design of our system, a  
(17) lot of strategic recommendations we would go to him  
(18) for which we no longer went to him before, we  
(19) stripped away that part of his job and made it much  
(20) more tactical in terms of following a very rigid  
(21) procedure through a compliance officer, and  
(22) basically being totally reactive to what buildings

Page 226

(1) were to be hooked up and following a very, very  
(2) defined limited procedure rather than having  
(3) open-ended engineering authority.

(4) Q: Did his salary change in any way?

(5) A: It was reduced in the sense that-it was  
(6) not increased as it had been before, and bonuses  
(7) were eliminated that had been given before.

(8) Q: But in terms of just an actual decrease in  
(9) salary, that did not happen?

(10) A: No.

(11) We felt that would be-you could take  
(12) draconian action and eliminate the person as some  
(13) kind of punishment, but we didn't feel that was the  
(14) best way to correct the problem at that point. We  
(15) are a small company with limited resources. We had  
(16) a person there who knew where all these sites were,  
(17) and apparently was more than intimately involved  
(18) with the problems and the lapses, and was at least  
(19) in the short term the best person to go in there  
(20) and fix what was broken.

(21) Q: Did you just say there was a particular  
(22) person that was the best to go in there and fix

Page 227

(1) what was broken?

(2) A: The person who caused the problem.

(3) Q: And in your analysis of what happened, are  
(4) you saying that Mr. Nourain was the cause of what  
(5) happened?

(6) A: No. He was-I told you we had a series of  
(7) foulups that related to operations, engineering,  
(8) the coordination with counsel in Washington. There  
(9) was a chain. I criticized counsel in that process.  
(10) I criticized the General Manager of Operations in  
(11) that process. I criticized Behrooz in that  
(12) process. I criticized myself in that process for  
(13) being the person ultimately responsible, and not  
(14) having my nose further into it and knowing about it  
(15) before I did know about it.

(16) Q: Other witnesses have testified that-and  
(17) you alluded to it yourself-certain procedures have  
(18) been-

(19) MR. SPITZER: I want to make sure this  
(20) comports with the gag order that we are living  
(21) under.

(22) MR. WEBER: It will.

Page 228

(1) MR. BECKNER: Let me note for the record  
(2) if the recollection is influenced by someone's  
(3) repetition in prior testimony, at least it's done  
(4) on the record so we know what happened.  
(5) THE WITNESS: Am I being influenced?  
(6) MR. SPITZER: I don't know. You might.  
(7) BY MR. WEBER:  
(8) Q: That after all of this came to light,  
(9) procedures were certainly put into effect such as  
(10) the installation of a compliance officer which you  
(11) referred to here. Prior to that time, prior to  
(12) these proceedings being changed, what factors  
(13) determined what type of things department heads  
(14) could do on their own and what types of things they  
(15) would have to come to you for prior authority to  
(16) take action?  
(17) A: You would have to give me—that's too  
(18) general a statement. Some people. You would have  
(19) to give me an example. Some things relate to  
(20) capital, financial persons, marketing person has to  
(21) do with how much you spend on your expense, contact  
(22) things to do with what you have to say in a

Page 229

(1) presentation, things to do with  
(2) engineering—everybody has their limits, including  
(3) myself.  
(4) Q: Is there any type of written documentation  
(5) which demonstrates or which spells out what  
(6) department heads can do on their own and what they  
(7) have to come to you for prior authority?  
(8) A: No.  
(9) Remember: We were then a company of  
(10) perhaps 60, 70, 80 people, many of whom were  
(11) installers out in the field, so it was a relatively  
(12) small company. We weren't Time Warner or some big  
(13) company with thousands of people and books of  
(14) procedure.  
(15) Q: Let's limit the question then to FCC  
(16) applications only.  
(17) Were there any type of guidelines in  
(18) effect what department heads could do in relation  
(19) to an FCC application on their own, or they would  
(20) have to come and discuss it with you first?  
(21) A: No, I wish there were, in retrospect.  
(22) (Price Exhibit No. 13 was

Page 230

(1) marked for identification.)  
(2) Q: This is a one-page memorandum Bates stamp  
(3) 9572.  
(4) A: Right.  
(5) Q: Have you seen this document before,  
(6) Mr. Price?  
(7) A: I'm sure I have, but it isn't indelibly  
(8) etched in my mind, no.  
(9) Q: Is this the type of thing that would  
(10) require your prior approval?  
(11) A: Yes. Giving equipment away that wasn't  
(12) authorized would require approval in this case,  
(13) perhaps not my approval, but for some reason this  
(14) account exec committee, that would normally go to  
(15) her boss.  
(16) Q: Prior to the Operations Department  
(17) installing any equipment on a building, would that  
(18) require your approval?  
(19) MR. SPITZER: What is the "that"?  
(20) BY MR. WEBER:  
(21) Q: The okay to install equipment on a

Page 231

(1) A: Are you talking about a microwave  
(2) installation as opposed to a customer premises?  
(3) Q: Yes. I'm talking about the receiving dish  
(4) on the roof of the building.  
(5) A: It would require more than my permission,  
(6) would have to have generally a signed contract, so  
(7) some counsel would have to have negotiated a  
(8) contract which I and management would have to  
(9) approve as being in accord with a contract we were  
(10) willing to enter into, sure.  
(11) Q: In other words, once there is a fully  
(12) executed contract, was that a green light for the  
(13) operations people to begin construction?  
(14) A: Not automatically. They would have to  
(15) come to management, say marketing would go to  
(16) counsel, counsel would negotiate the contract,  
(17) counsel would inform management like in one of  
(18) those memos you saw that there was a fully executed  
(19) contract, and operations would get informed that  
(20) they were permitted to proceed with the  
(21) installation, chained to something like that.  
(22) MR. WEBER: Could you read back the last

Page 232

(1) part of his answer.  
(2) (Whereupon, the Court Reporter read back  
(3) the previous answer.)  
(4) THE WITNESS: In a chain something like  
(5) that. That was prior to our compliance procedure  
(6) being in place. That is now formalized through a  
(7) compliance officer.  
(8) BY MR. WEBER:  
(9) Q: Understood. And the question was using  
(10) that time frame prior to the compliance program.  
(11) (Price Exhibit No. 14 was  
(12) marked for identification.)  
(13) Q: For the record, this is a one-page  
(14) document Bates stamp 5814.  
(15) A: Yes.  
(16) Q: Is this the type of memo you were just  
(17) referring to in your prior answer?  
(18) A: Yes. Well, you could see Andy Berkman had  
(19) negotiated the contract, and I believe what Edward  
(20) Foy is saying here, management has now approved  
(21) this to go forward.  
(22) Q: And do you recognize the handwriting on

Page 233

(1) the lower half of this document with the date 5/19  
(2) and 11:00 a.m.  
(3) A: No, I don't.  
(4) Q: Is it your understanding that the POP  
(5) referred to in there is referring to you?  
(6) A: I presume it is.  
(7) Q: Do you recall informing Mr. Nourain to  
(8) move on the equipment for the Wales Hotel?  
(9) A: No, I don't. I may have, but it's over  
(10) two years ago or thereabouts, and I don't remember.  
(11) Normally I wouldn't. I would deal with operations.  
(12) Would be part of our weekly management meeting, and  
(13) operations would be informed, and they would make  
(14) those arrangements with Behrooz. I think Edward  
(15) Foy is using shorthand here rather than the full  
(16) procedure.  
(17) Q: I'm not sure I understand what you mean by  
(18) he's using shorthand—  
(19) A: Using shorthand to describe what happened,  
(20) and almost all of those were the subject of our  
(21) weekly management meeting where installation would

Page 234

[1] Foy was communicating directly with them, and  
[2] Nourain through that weekly management meeting  
[3] procedure.

[4] Q: Do you offhand recall the address of the  
[5] Wales Hotel?

[6] A: No, I don't.

[7] Q: Would you be willing to stipulate it's  
[8] 1295 Madison?

[9] MR. SPITZER: I think that's right.

[10] BY MR. WEBER:

[11] Q: If the date of this memo is correct, May  
[12] 16, 1994, do you have any knowledge there was an  
[13] application on file at the FCC yet for a path at  
[14] 1295 Madison?

[15] A: No, I don't recall.

[16] MR. SPITZER: You mean as of May 16th?

[17] MR. WEBER: Yes.

[18] THE WITNESS: No, I don't know. I may  
[19] have seen it today in one of those historical  
[20] summaries, but just looking at this, I don't know.

[21] BY MR. WEBER:

[22] Q: And under the procedures that were in

Page 235

[1] effect before the compliance officer started his  
[2] duties, who would have been responsible to make  
[3] sure an application was on file once a fully  
[4] executed contract is completed or is ready?

[5] A: The Operations Department, with  
[6] engineering, it was my impression, would coordinate  
[7] that process with Washington counsel.

[8] Q: And who specifically in operations?

[9] A: Behrooz Nourain.

[10] Q: And at this point in time, say May of '94,  
[11] is it correct to say you had no involvement in the  
[12] application process to the FCC?

[13] A: I did early on, as I mentioned, but I  
[14] didn't in the normal course thereafter when I  
[15] thought I had laid down what should be done after I  
[16] set up the original licenses or applications.

[17] Q: Earlier Mr. Beckner was questioning you  
[18] about some of the dates on the given contracts you  
[19] have with the buildings.

[20] To your knowledge, did Liberty ever miss  
[21] completing installation by the date specified in  
[22] the contract?

Page 236

[1] A: Yes, on occasion, we would.

[2] Q: What happened in those instances?

[3] A: That the building would cut us some slack  
[4] because they weren't demanding of the service by  
[5] the contract date, so they didn't tell us it was  
[6] going to be a problem if we gave them a later date.  
[7] In some cases if it was going to be substantially  
[8] later as when we had-as when the FCC problem  
[9] surfaced and we were substantially held up, we  
[10] would go back to them and ask their permission to  
[11] delay the installation date.

[12] They were quite cooperative generally and  
[13] understanding of what we had to go through, and  
[14] would work with us generally.

[15] Q: When you did initial sales pitches to the  
[16] buildings, did you go into any detail about what  
[17] type of Federal authority was required in order to  
[18] install a system in that building?

[19] A: We would refer to microwave licenses being  
[20] required to serve the building, yes. That was in  
[21] most of our literature, in fact.

[22] Q: Can you recall if many of the buildings

Page 237

[1] required much about what type of Federal authority  
[2] or wanted to know more about the authority to  
[3] install the system?

[4] A: Every building had at least one lawyer,  
[5] and being New York lawyers, some had a hundred  
[6] lawyers, and on occasion they would tell me they  
[7] would call the FCC and ask about our licensing  
[8] requirement. Some of them would call the  
[9] department of telecommunications and energy and ask  
[10] them, and some of them would call Time Warner and  
[11] ask them.

[12] And very often the statistics are that we  
[13] would have usually an employee or a lawyer for Time  
[14] Warner who lived in one of these buildings, and he  
[15] would call to make sure, so the scrutiny was fairly  
[16] intense, yes. Cravath and Paul Weiss have many  
[17] people living in apartments in New York.

[18] Q: Also earlier Mr. Beckner was asking about  
[19] factors you had used to determine whether to use a  
[20] coaxial cable or a microwave system to hook up a  
[21] building.

[22] Was time also a factor?

Page 238

[1] A: Almost never.

[2] Q: When was it a factor?

[3] A: When somebody would ask about, does it  
[4] make any difference if you do it this way rather  
[5] than that way.

[6] As I recall, one situation between two  
[7] buildings, the negotiation of getting the wire  
[8] between the building through the garden through the  
[9] wall took six months. It would have been easier to  
[10] get separate FCC licenses. That's not an uncommon  
[11] example. Neighbors don't necessarily get along in  
[12] New York.

[13] Q: As a norm, which would you say is quicker?  
[14] To hard-wire a building with a coaxial cable or to  
[15] install a microwave receiving site?

[16] A: There is no norm. That took six months.  
[17] I could think of another case where we had to look  
[18] at working through our way through backwards and  
[19] pitbulls barking at us, and eventually decided it  
[20] was easier to put two dishes in the same block,  
[21] even though it wasn't an installed block simply  
[22] because we couldn't deal with all the complications

Page 239

[1] of getting neighbor connected to neighbor.

[2] I'm not trying to be clever about it.

[3] There is no norm in that case. If you happen to  
[4] have two buildings next door to one another who  
[5] happened to have a common wall who loved one  
[6] another and didn't mind where the hole was drilled  
[7] and how it was done, that would be the perfect  
[8] world, but that was very rare.

[9] Q: Do you know offhand how many noncommonly  
[10] owned buildings you have connected by hard wire?

[11] MR. SPITZER: As of what date?

[12] MR. WEBER: As of today.

[13] THE WITNESS: About a dozen. I mean,  
[14] maybe eight, maybe 14, but in that area somewhere.

[15] Q: Has the number gone down in the past year?

[16] A: I don't think so. I

[17] think-actually-repeat the question again so I  
[18] could be absolutely clear.

[19] Q: How many buildings that you have that are  
[20] connected-noncommonly owned buildings that are  
[21] connected by hard-wire coaxial cable?

[22] A: The reason I hesitate is-and the problem

Page 240

(1) is that's why we first started lobbying for the  
(2) change in the law, the buildings, that managing  
(3) agents of buildings change all the time, and what  
(4) was commonly managed in one year is very often not  
(5) commonly managed the next year, so it's a moving  
(6) target. It really does change it. It probably  
(7) changed this month, and I don't know even know it  
(8) yet because somebody fired their managing agent who  
(9) used to be the same one and is now different.

(10) Q: But if you recall when you were shown Foy  
(11) Exhibit 32-I'm going to show you Appendix B from  
(12) the HDO. And at that time the HDO specifies 13  
(13) hard-wired noncommonly owned buildings that you had  
(14) applied for a microwave path to replace the hard  
(15) wire.

(16) A: Right.

(17) Q: At that point, was this the full extent of  
(18) your hard-wired buildings, or did you have more  
(19) hard-wired noncommonly owned buildings?

(20) MR. SPITZER: Can I just-I don't mean to  
(21) prevent the witness from answering the question,  
(22) but I want to say I think your question before

Page 241

(1) related to only commonly owned.

(2) MR. WEBER: Non.

(3) MR. SPITZER: Therefore did not subsume  
(4) commonly managed, which is another piece of the  
(5) statutory exception.

(6) And we could deal with this down the road,  
(7) but there are pairs of buildings, I believe, that  
(8) are in Appendix B that are commonly owned or  
(9) managed, so therefore to the extent that the  
(10) predicate to your question has been this list at a  
(11) minimum falls within the group you are inquiring  
(12) about, I'm not sure that premise is correct.

(13) THE WITNESS: I can recognize one right  
(14) off. So again, it changes, and either this was  
(15) incorrect at the time or the ownership or  
(16) management changed subsequently to make it  
(17) incorrect. But to the best of my knowledge, this  
(18) was the list.

(19) BY MR. WEBER:

(20) Q: To your knowledge, then, at the time the  
(21) HDO was issued, had Liberty endeavored to replace  
(22) all hard-wired noncommonly owned, noncommonly

Page 242

(1) managed buildings with microwave?

(2) A: To the best of my knowledge, yes.

(3) Q: If hard-wiring the buildings was a  
(4) difficult endeavor, can you tell us why microwave  
(5) facilities were not applied for in the first place?

(6) A: It very often-remember: I said we were  
(7) learning by experience how this was going to work.  
(8) So some cases it worked fine. Other cases turned  
(9) out to be very difficult. And it seemed prudent  
(10) after a while, rather than go through several  
(11) months and end up having a problem between two  
(12) neighbors or end up having it more difficult or  
(13) having something change from commonly owned to  
(14) noncommonly owned, it seemed more prudent we should  
(15) file for microwave licenses and take the cautious  
(16) way.

(17) Q: You mentioned you found one example there  
(18) at least where I believe you said they were  
(19) commonly managed. Could you tell us-

(20) A: Well, it appears to me that 170 and 160  
(21) East End are both managed by the same company and

Page 243

(1) and 170 West End.

(2) Q: And it's your understanding they were  
(3) commonly managed at the time of the HDO?

(4) A: It's my understanding they're commonly  
(5) managed now, and I don't know-it's a good example.  
(6) This is part of Lincoln Towers. Lincoln Towers is  
(7) eight buildings and had two managing agents and  
(8) Lincoln Towers is eight buildings and has one  
(9) managing agent. It's that perfect kind of problem  
(10) that we run into that is a damned moving target.

(11) Q: Are there any buildings there that you  
(12) recognize as being under common management?

(13) A: I think there is one other pair identified  
(14) in the office earlier. Maybe 86th Street. 86th  
(15) Street or-there was one other pair I recognized  
(16) later as not fitting the noncommonly owned  
(17) connection. I don't know it offhand just looking  
(18) at the list.

(19) Q: Do you keep yourself apprised of who the  
(20) managing agents are of the buildings?

(21) A: I try to, but I don't know today-this  
(22) month all the annual meetings of all the

Page 244

(1) cooperatives and condos in the City of New York are  
(2) being held, and if it's nothing like a normal year,  
(3) 20 percent of them will fire their managing agent  
(4) and hire another one, and they have done it and I  
(5) don't even know about it.

(6) Q: Is it because of the Communications Act  
(7) more specifically the cable provisions of the  
(8) Communications Act, is that the reason why you keep  
(9) yourself apprised of who the managing agents are of  
(10) the buildings?

(11) A: No. We have to know who represents the  
(12) building. That's the authorized representative of  
(13) the building. We got a note for our records who is  
(14) in charge. It's like something changing their ad  
(15) agency. If you want to sell them an ad, you have  
(16) to find out who the new agency is or you won't get  
(17) the ad.

(18) Q: There also was much discussion earlier  
(19) that once you found out there were certain paths  
(20) which began operation prior to having authority and  
(21) the steps you took to investigate, can you recall  
(22) if there was a discovery of any paths where no

Page 245

(1) application had yet even been filed?

(2) A: I believe there were one or two.

(3) Q: And what was done at that time?

(4) A: We got extremely upset. That was number  
(5) one. And number two, we told the people who were  
(6) in charge of this at the time, the engineering  
(7) people, the operations people, the construction  
(8) people, the law firms, to get these properly  
(9) authorized yesterday. Everybody was fingerprinting  
(10) and they were saying so-and-so should have told me  
(11) and I wasn't properly informed. When we got done  
(12) with that, it got down to let's get it done and set  
(13) it straight.

(14) Q: I'm going to show you what was previously  
(15) marked as Lehmkuhl Exhibit 1.

(16) (Document handed to the witness.)

(17) Q: And first I ask you if you recognize what  
(18) this type of document is.

(19) A: No, I do not. I mean, again, if I read  
(20) through this and looked as we did with the other  
(21) document, tried to decode all this, I might be able

Page 246

[1] don't.  
[2] Q: You don't recognize it as being an  
[3] application for a microwave path?  
[4] A: No.  
[5] Q: I would like you to turn to the page  
[6] marked at the bottom eight. And I would like you  
[7] to first look at the second paragraph where it  
[8] states, "Liberty proposes." And I just want you to  
[9] tell me if, in your view, this paragraph is termed  
[10] in the future tense.  
[11] MR. SPITZER: Are you asking him a  
[12] grammatical question, if that question is in the  
[13] future tense?  
[14] MR. WEBER: Yes.  
[15] THE WITNESS: Without reading this whole  
[16] document and knowing the context, whether it's  
[17] proposed present or proposed as future, I don't  
[18] know. It could be taken either way. I just don't  
[19] know, looking at it.  
[20] BY MR. WEBER:  
[21] Q: Whether it's presents or future, it's  
[22] certainly not past tense; is that correct?

Page 247

[1] A: That's correct.  
[2] Q: If I told you that this is actually one of  
[3] the applications that was filed after the path had  
[4] gone into operation--  
[5] MR. WEBER: I will ask counsel if they  
[6] will stipulate as to that, that this is an  
[7] application for the 1775 York Avenue?  
[8] MR. SPITZER: That's Brittany?  
[9] MR. WEBER: Yes.  
[10] MR. SPITZER: I'm not sure. If your  
[11] inquiry is we will stipulate that service appears  
[12] to have begun prior to the stamp date of February  
[13] 22, which is on page one of the exhibit, the "A"  
[14] list of Price Exhibit 3 indicates--I don't know  
[15] what the service date was. Is there a document?  
[16] If you're going to represent to us that those are  
[17] the dates, then I will be willing for the moment to  
[18] agree to that. But I won't stipulate that was  
[19] known by anybody who signed this at the time that  
[20] it was signed. I just don't know if that was the  
[21] issue, which is a separate issue, which I gather is  
[22] where you were going with your verb tense.

Page 248

[1] (Document shown to counsel.)  
[2] MR. WEBER: I'm not inquiring whether it  
[3] was known at that time that this was already--  
[4] MR. SPITZER: That's fine. I will accept  
[5] that.  
[6] BY MR. WEBER:  
[7] Q: But I'm going to ask is, do you recall  
[8] which buildings or which paths you later discovered  
[9] were already in operation even before an  
[10] application was filed?  
[11] A: I believe we determined when we did this  
[12] analysis, but I don't recall just looking at this  
[13] which they were, because it doesn't have the  
[14] activation date on it, but there were a couple,  
[15] yes.  
[16] Q: Do you know if anything was ever filed to  
[17] amend the application or correct the application to  
[18] let it be known in the application that the path  
[19] had already been operated?  
[20] A: Well, we sure made it clear we wanted  
[21] proper authority obtained immediately, all right?  
[22] Q: I'm not sure that's responsive. If at the

Page 249

[1] time an application was filed and the path was  
[2] already in operation, if it was later discovered  
[3] that the application was filed after the path was  
[4] already in operation, was the application ever  
[5] amended to correct that, instead of stating Liberty  
[6] proceeds to do this, to state that Liberty is  
[7] already doing that?  
[8] MR. SPITZER: Again, I don't mean to cut  
[9] off the witness or certainly not to testify, but I  
[10] think the confusion may be that at the point in  
[11] time that Liberty discovered there was unauthorized  
[12] service, he disclosed that fact as we have gone  
[13] through the beginning of the May 17 surreply to the  
[14] Commission. If the question is whether subsequent  
[15] applications incorporated the May 17 application  
[16] into their text, that you will have to ask the  
[17] witness, and I certainly can't and won't testify to  
[18] that fact. But I don't think there has been any  
[19] testimony that prior to the May 17 surreply or  
[20] perhaps that one reference it is late April, there  
[21] was an awareness of the unauthorized service, and  
[22] at that point there was the declaration of this

Page 250

[1] fact to the Commission.  
[2] MR. HOLT: I would like to lodge an  
[3] objection for the record. I understand counsel's  
[4] desire to clarify or seek clarification for  
[5] confusing questions, and we certainly don't want  
[6] the witness to be misled, but if counsel has an  
[7] objection because a question is confusing, I would  
[8] suggest he make these objections instead of what  
[9] could be construed by some as a speaking objection  
[10] that provides testimony to the witness.  
[11] THE WITNESS: That's fair. I didn't coach  
[12] counsel in how to frame their response to what to  
[13] do. We internally said this must be fixed and a  
[14] lot of smart people who supposedly know FCC  
[15] procedures with a lot of legal and consulting  
[16] advice, went about doing what they had to do. Was  
[17] that an amendment? Was it a refile? Was it  
[18] initial filing? Did the language--did I read  
[19] through all of this and check their language to see  
[20] how it was they were fixing the problems we had?  
[21] No, I did not.  
[22] BY MR. WEBER:

Page 251

[1] Q: Is it your understanding, then, that the  
[2] surreply, which is Exhibit 7 in your deposition,  
[3] was Liberty's way of telling the Commission that  
[4] they had operated paths prior to applying for them?  
[5] MR. SPITZER: Wait a second.  
[6] (Counsel conferring.)  
[7] THE WITNESS: This was one of, I believe,  
[8] many communications to the Commission, including  
[9] many by counsel, beginning to go through our  
[10] problem and straighten it out. I don't think it  
[11] was the exclusive way that we communicated with the  
[12] FCC. It was my impression that there were a good  
[13] number of interactions at that point by various  
[14] counsel for various purposes to try to fix this  
[15] problem or cure the problem.  
[16] Was this the exclusive way of notifying  
[17] the FCC of the problem? I can't say that. I doubt  
[18] it. On that day, maybe it was, maybe a week later  
[19] there were maybe three more conversations or  
[20] documents flowing. I don't know. We were  
[21] operating, I can tell you, with a lot of legal  
[22] advice by a lot of people, all right?

Page 252

BY MR. WEBER:

(1) Q: How extensive would you say your  
(2) understanding is of the technology that OFS  
(3) operations falls into?  
(4) A: Limited.  
(5) (Price Exhibit No. 15 was  
(6) marked for identification.)  
(7) Q: For the record, this is a one-page letter  
(8) Bates stamp 7356. Exhibit 15.  
(9) (Document handed to the witness.)  
(10) A: Yes.  
(11) Q: Have you seen this letter previously?  
(12) A: I presumed I have, if I put a note on it.  
(13) Q: That is your handwriting in the upper  
(14) right?  
(15) A: Yes, it is.  
(16) Q: Can you read what it states out loud to  
(17) us.  
(18) A: (Reading) Be sure to conduct  
(19) written-Tony, be sure to conduct written  
(20) engineering studies so we can demonstrate some  
(21) immediate action to serve this site. POP.  
(22)

Page 253

(1) Q: And can you tell us what a written  
(2) engineering study is.  
(3) A: It means a response that there is a form  
(4) that they would generally fill out, do we have line  
(5) of sight, what kind of wiring does the building  
(6) have, sort of an installation checklist they would  
(7) do back in this period that would indicate that we  
(8) had done the preliminary engineering work  
(9) sufficient to justify that we could serve the  
(10) building.  
(11) MR. SPITZER: I want the record to reflect  
(12) that Mr. Holt had to step out.  
(13) BY MR. WEBER:  
(14) Q: Was it common for you to request such  
(15) studies for buildings?  
(16) A: No. It was normally done in the ordinary  
(17) course. I presume here someone must have--once in  
(18) a while the marketing people, specifically Bertina  
(19) and today Jennifer, would say this building needs a  
(20) little special help. Could you nudge someone to  
(21) get things going. So this would be my nudging.  
(22) Q: Did you review the engineering studies

Page 254

(1) once they were done?  
(2) A: No. It was a piece of paper generally, a  
(3) checklist that had very basic information filled  
(4) out. It was not a technical study, although they  
(5) followed it. There were designed and other more  
(6) technical documents, but I believe this was a  
(7) preliminary site survey that's being requested here  
(8) just by the sound of it.  
(9) Q: Earlier you also spoke about when you were  
(10) doing your review of all the licenses and all the  
(11) applications you had on file. There were  
(12) references made to people being spoken to at the  
(13) FCC. Do you know who specifically was spoken to at  
(14) the FCC?  
(15) A: At what period was this?  
(16) Q: I guess '91, '92.  
(17) MR. SPITZER: Could you state the context.  
(18) BY MR. WEBER:  
(19) Q: I will ask this again. When you were  
(20) first speaking to people at the FCC about licensing

Page 255

(1) to?  
(2) A: When I heard that we were having  
(3) difficulty getting licenses or authority on a  
(4) timely basis, I called Washington counsel to ask  
(5) who I should talk to at the FCC to understand  
(6) better what was required. They informed me that  
(7) there was what was called a brown bag lunch, I  
(8) remembered, because I had never been to a brown bag  
(9) lunch that the FCC was holding.  
(10) Miraculously, it was going to be the  
(11) Private Radio Bureau who was going to be conducting  
(12) this lunch, and I could attend this along with  
(13) other people and ask questions to all of the  
(14) management of that division.  
(15) And at that meeting there was a full  
(16) presentation by each member of that Private Radio  
(17) Bureau, and they spoke to a variety of subjects  
(18) about plans they had, different types of activities  
(19) they were engaged in, changes of personnel,  
(20) procedures.  
(21) And during that lunch I raised my hand and  
(22) said I would like to understand better why it is we

Page 256

(1) are having difficulty getting licenses that have  
(2) been approved for issuance but are not forthcoming.  
(3) The man who answered my question, I  
(4) believe, was Mr. Hayden. He apologized for the  
(5) delays and took responsibility for the problem,  
(6) explained this was a new service, that software  
(7) wasn't in place yet.  
(8) Actually I think he turned to a couple of  
(9) executives who were with him at the meeting and  
(10) asked them what was going on, and I don't think he  
(11) was that intimately familiar with that subject.  
(12) He invited me to come up afterwards to  
(13) talk to him about this. He couldn't have been more  
(14) forthcoming and helpful, and he said I will look  
(15) into this immediately, and pulled over someone  
(16) else. And I said, can you get involved in this?  
(17) And they said yes, we got the problem in the  
(18) computer and whatever.  
(19) Q: Do you know who the someone else was?  
(20) A: I don't know who the someone else was. I  
(21) assume they were more specifically involved in  
(22) licensing 18 gigahertz frequencies rather than just

Page 257

(1) overall Bureau management.  
(2) And said that he would, if necessary,  
(3) issue Special Temporary Authority--first time I  
(4) ever heard that term--in order to get this process  
(5) going.  
(6) And that was the contact I had. I wrote  
(7) him afterward, thanking him for his help and  
(8) particularly his attitude. So I met others there,  
(9) but I can't remember their names, but I believe it  
(10) was the entire management of what was then the  
(11) Private Radio Bureau.  
(12) Q: In '95, you also testified there was a  
(13) time where people at the FCC were contacted in  
(14) order to try to reconcile dates.  
(15) Do you know who specifically at the FCC  
(16) was spoken to?  
(17) A: No. I wasn't involved in that process.  
(18) Q: And the weekly meetings you have with the  
(19) staff, did the topic of--first of all, let's frame  
(20) this during the course of 1995. Did the topic of  
(21) Time Warner's Petitions to Deny come up in the

Page 258

(1) A: They came up when it was apparent that  
(2) they were going to hold up our process. I mean for  
(3) a while we didn't even know what they were. I  
(4) think there was a point originally when they were  
(5) based on Liberty was just bad people and you  
(6) shouldn't do business with them because they were  
(7) bad people.

(8) At that point, when we finally realized  
(9) that there was a problem, then we began to react to  
(10) it.

(11) Q: Can you recall how soon after Time Warner  
(12) filed a petition would you learn of its being  
(13) filed?

(14) A: Oh, generally within a couple of days, I  
(15) believe. I think I was contacted pretty quickly.

(16) Q: Then also, to your knowledge, would you  
(17) have raised the issue of that petition in the  
(18) following staff meeting?

(19) A: If it was relevant to the operations, if  
(20) it was going to slow down the operations or  
(21) interfere with our ability to get licenses for  
(22) properties, certainly.

Page 259

(1) Q: Was it your understanding that a Petition  
(2) to Deny would slow down the process?

(3) A: I had no knowledge what a Petition to Deny  
(4) was, what its effect was. Time Warner, in our  
(5) experience, has over five years appealed to every  
(6) governmental agency in the United States to condemn  
(7) Liberty and to try to stop us, including direct  
(8) efforts to try to put us out of business. We try  
(9) not to let that distract us from doing our  
(10) business. Most of that is crap. If Time Warner  
(11) comes along and it's serious and we understand that  
(12) they are pointing at a real problem we have, that  
(13) is different. But an effort by Time Warner to  
(14) complain to some agency, state, local or Federal,  
(15) is that a matter of great news to our management  
(16) meeting? No. That is business as usual.

(17) Q: When Time Warner started alleging that you  
(18) were operating without authority, did you consider  
(19) that a serious matter?

(20) A: Without approved licenses, they went to  
(21) the state and said we were in a legal-

(22) Q: I'm sorry-

Page 260

(1) A: I got to tell you. They went to everybody  
(2) and said we were illegal in every respect every day  
(3) of the week. Those kind of frivolous filings by  
(4) Time Warner caused us to have a pretty thick skin  
(5) about them calling wolf about Liberty.

(6) When they called something and we looked  
(7) into it and it turned out we had a problem, that's  
(8) different. We took that very seriously.

(9) Q: That's the instance I'm talking about now.  
(10) And when Time Warner would file Petitions to Deny  
(11) against your microwave applications, and I believe  
(12) at the time you said it may be sometime in the  
(13) first quarter or April of '95 where you learned  
(14) that paths were being operated without prior  
(15) authorization, at that point did you consider Time  
(16) Warner's petitions serious?

(17) A: You bet.

(18) Q: And at that point would they have been  
(19) discussed in your weekly meetings?

(20) A: They would have been discussed at a point  
(21) where we figured out the foundation for them. We  
(22) wouldn't get-if we were made aware of a petition

Page 261

(1) on a Tuesday and the management meeting was on a  
(2) Thursday, we wouldn't circulate a Time Warner  
(3) petition among a group of operating people until we  
(4) asked our lawyers what it meant, until we  
(5) investigated the foundation for it, analyzed the  
(6) operating implications and go back to our people  
(7) and say we have a problem.

(8) Would we circulate among management  
(9) another petition from Time Warner until we looked  
(10) into it? No. It wouldn't make any sense. We  
(11) would just frighten a lot of people with another  
(12) assault from Time Warner that may or may not have a  
(13) foundation.

(14) Q: How long did this process take of  
(15) investigating to see if it had any merit?

(16) A: Depends upon the particular petition. If  
(17) you are talking about the initial one from Time  
(18) Warner that talked about the two unauthorized  
(19) locations, maybe it was a couple of weeks. I don't  
(20) know. I'm speculating, but we didn't turn around  
(21) and circulate it at the management meeting and say  
(22) Time Warner has a problem, and if they have a

Page 262

(1) problem, we have a problem.

(2) Q: Is it your understanding that an  
(3) application pending before the FCC will take longer  
(4) to be granted if there is a petition filed against  
(5) it, regardless of how frivolous the petition is?

(6) A: I had no experience with that until they  
(7) filed the petition. Really. I have never been  
(8) through this before. And I didn't know anyone who  
(9) had a Petition to Deny filed. I don't know if  
(10) anybody had a petition filed in the United States  
(11) of an 18 gigahertz.

(12) Q: Is it your understanding now that a  
(13) petition will slow down an application regardless  
(14) of how frivolous the petition is?

(15) A: Ironically, I have to tell you their  
(16) petition accelerated the pace of authorization we  
(17) are getting from the FCC. Take that to the bank.

(18) Q: How often, if at all, did Mr. Nourain  
(19) attend the weekly staff meetings?

(20) A: Never. Maybe he was there once or twice,  
(21) but it would have been the exception, rare  
(22) exception, rather than the rule.

Page 263

(1) Q: When it was determined that the staff  
(2) should be informed of Petitions to Deny being filed  
(3) by Time Warner, who specifically did you tell about  
(4) these petitions?

(5) A: Well, they came from counsel to me, and I  
(6) believe that other-I believe that Howard and  
(7) Edward Milstein were simultaneously-any legal  
(8) document we received, I automatically send it and  
(9) often it's generally sent already to other counsel.  
(10) And counsel, since they work for the owners,  
(11) distribute it to the owners and the senior  
(12) management, the three of us.

(13) Q: Did you ever discuss Petitions to Deny  
(14) with Mr. Ontiveros?

(15) A: I'm sure we did at some point.

(16) MR. SPITZER: Are you referring  
(17) specifically to the term Petitions to Deny or the  
(18) larger issue raised in the Petitions to Deny?

(19) MR. WEBER: First we will say the  
(20) petitions.

(21) THE WITNESS: Well, the subject of Time  
(22) Warner challenging our authorizations, yes, it was

Page 264

(1) a matter of major moment. We started to ask what  
(2) the hell was going on, certainly.

(3) BY MR. WEBER:

(4) Q: And then that same regard you also  
(5) discussed the content of the petitions with  
(6) Mr. Ontiveros?

(7) A: Not necessarily the content, but the paths  
(8) that were claimed to be a problem, to share a  
(9) regulatory document that I can hardly understand  
(10) with engineers who could hardly understand the  
(11) daily newspaper, is not a productive exercise.

(12) Q: Do you know when the first Petition to  
(13) Deny was filed by Time Warner?

(14) A: I believe it was early in the year. I  
(15) don't recall. I think so. That's probably what I  
(16) was confusing when I said January. I think there  
(17) was an earlier one that was one of these  
(18) fusillades, and then it was followed by more  
(19) specific Petitions to Deny.

(20) Q: Do you consider in your opinion  
(21) Mr. Nourain to be a good person with details,  
(22) somebody who makes sure all the I's are dotted and

Page 265

(1) all the T's are crossed?

(2) A: I did at one time, or I presumed he knew  
(3) the ins and outs of the FCC process and how to deal  
(4) with counsel. I later learned that was not true.

(5) (Counsel confers with the witness.)

(6) A: Just to clarify that, I won't change at  
(7) all the answer I gave you. Behrooz, when I-Bruce  
(8) McKennon hired him, Joe Stern who I have the  
(9) ultimate respect for, the leading microwave  
(10) engineer, recommended him. He came with a Ph.D. I  
(11) forget what the credentials were. They were  
(12) exceptional. He came with very good  
(13) recommendations. Bruce McKennon thought he did  
(14) excellent work for about a period of a year.

(15) The people who he dealt with, the clients  
(16) thought he was very thorough as he walked their  
(17) roof tops and did their site work. The people who  
(18) worked with him day to day felt he was very well  
(19) schooled in what he did.

(20) In terms of the administrative side, it  
(21) turned out that he was not good at that, but he was  
(22) good at more technical things, but not the

Page 266

(1) regulatory and administrative and record keeping  
(2) and regulatory side.

(3) MR. HOLT: I would like to interject that  
(4) the witness's response was provided after an  
(5) off-the-record discussion with counsel. I would  
(6) like to ask again, I certainly don't want to  
(7) interfere with counsel's ability to communicate  
(8) with his witness or lodge objections to a confusing  
(9) question, and the witness certainly has the ability  
(10) to himself indicate that he's confused, but I would  
(11) ask that you refrain from off-the-record  
(12) discussions with your counsel during a pending  
(13) question.

(14) THE WITNESS: I was not coached by  
(15) counsel, thank you.

(16) BY MR. WEBER:

(17) Q: You described Liberty as being a small  
(18) company. Prior to the compliance officer being  
(19) installed, how much interaction did you have with  
(20) Mr. Nourain on a day-to-day basis or weekly basis?  
(21) A: I would talk to him on the telephone

Page 267

(1) Bruce McKennon was there, not at all. When we had  
(2) our compliance procedure in effect, almost not at  
(3) all. Once every couple of months.

(4) During the period after Bruce left, more  
(5) regularly a couple of times a week, but it was  
(6) certainly not daily, and face-to-face meetings were  
(7) at best once every two months, something of that  
(8) magnitude, having mainly to do with we heard from  
(9) this building they're complaining their survey was  
(10) supposed to be done and it wasn't done, that kind  
(11) of thing.

(12) MR. WEBER: Thank you. I have no further  
(13) questions.

(14) MR. HOLT: I got a number of questions to  
(15) ask the witness. I understand it's your intention  
(16) to terminate this deposition at quarter to eight,  
(17) and I would like to state for the record that's not  
(18) acceptable. As an independent party to the  
(19) proceeding, I have the full right to question the  
(20) witness regarding matters, and I intend to do so.

(21) MR. SPITZER: Are you done?

(22) MR. HOLT: I'm simply asking you what

Page 268

(1) accommodations can be made to insure that we have  
(2) the ability to question the witness.

(3) MR. SPITZER: I will be very much to the  
(4) point. You were not here on time this morning. We  
(5) were here at 9:00. You have not been here for most  
(6) of the depositions in this proceeding. It was for  
(7) you to discuss with your co-counsel how you would  
(8) divide many hours—we have been here all day. We  
(9) got here at 9:00 and were ready to start at 9:00.  
(10) It's 7:33, by my watch. The witness has already  
(11) completely reorganized his evening plans. He's  
(12) going to make the last flight out to New York  
(13) tonight. The judge at the hearing made it clear  
(14) that we were not to be assaulted by multiple  
(15) questioning from each of the various counsel for  
(16) the various parties here. We have accommodated  
(17) everybody at every turn and having our witnesses  
(18) questioned by as many lawyers as you have deemed  
(19) fit.

(20) But at quarter of eight this witness is  
(21) leaving. We will not make him available again.  
(22) You are free to appeal to the judge on that issue,

Page 269

(1) but I can tell you we will contest it vigorously,  
(2) and I would suggest it was up to you to negotiate  
(3) with your co-counsel. We have been here all day  
(4) and not been responsible for a single minute of  
(5) delay.

(6) MR. HOLT: Cablevision joined in the  
(7) noticing of Mr. Price for deposition. My  
(8) understanding is the deposition is commenced, and  
(9) I'm sure you will correct me if I'm wrong,  
(10) commenced on a timely basis this morning with  
(11) counsel for Time Warner conducting the initial  
(12) examination.

(13) MR. SPITZER: Were you here at 9:30?

(14) MR. HOLT: No.

(15) MR. SPITZER: Do you know what questions  
(16) were asked at 9:30?

(17) MR. HOLT: I'm—  
(18) (Simultaneous conversation.)

(19) MR. HOLT: What I want to say for the  
(20) record is my understanding is the depositions  
(21) commenced, they proceeded with counsel for Time

Page 270

[1] didn't try to interfere with Time Warner's right to  
[2] conduct his line of examination. I didn't  
[3] interfere with the Bureau counsel's right to  
[4] conduct their line of examination. But I represent  
[5] a completely independent party who has a right to  
[6] explore these issues during discovery, and I intend  
[7] to pursue it, and if it means going to the judge  
[8] and asking that Mr. Price be brought down here  
[9] again, I intend to do that.

[10] I'm asking you whether any sort of  
[11] accommodations can be made to proceed with this  
[12] deposition this evening or make other arrangements  
[13] to proceed with the examination that I'm entitled  
[14] to.

[15] MR. SPITZER: The answer is no. We have  
[16] already accommodated by extending beyond the hour  
[17] of 5:30. We agreed to go to quarter to eight.

[18] Once again, I note Mr. Holt was passing  
[19] questions to co-counsel through the course of the  
[20] afternoon. I don't think it necessary to mark the  
[21] pieces of paper that he wrote on, but he's  
[22] participated in this deposition. You were not here

Page 271

[1] this morning to hear the questions asked by  
[2] Mr. Beckner. You have no idea of the questions you  
[3] intend to ask are duplicative.

[4] MR. HOLT: If they are, you could lodge  
[5] the proper objection. I could arrive whenever I  
[6] want to arrive. I have the full right to proceed  
[7] with my line of questioning and I intend to do so.  
[8] So if you will not accommodate me in insuring that  
[9] I have an opportunity to examine your witness, then  
[10] it's a matter we will bring before the judge.

[11] MR. SPITZER: I look forward to raising  
[12] the issue before the judge. We had our witnesses  
[13] here daily. I have not seen your presence here on  
[14] a regular basis. If you had wished to ask  
[15] questions, it was an issue that you should have  
[16] arranged with your co-counsel. We have waited  
[17] patiently through the course of this day, and this  
[18] witness has answered every question without our  
[19] interposing an objection. And I think at this  
[20] point as the minutes creep by for you to waste  
[21] additional time is frivolous and foolish, but you  
[22] could do whatever you wish for the remaining eight

Page 272

[1] minutes.

[2] MR. HOLT: You have absolutely no basis to  
[3] make any sort of assessment as to the relevancy of  
[4] my questions.

[5] MR. SPITZER: I haven't done so yet. I  
[6] said you weren't here this morning to hear  
[7] Mr. Beckner's questions, so it may be that your  
[8] questions have been asked and answered.

[9] MR. HOLT: That's entirely speculative,  
[10] and I'm not going to begin with a line of  
[11] questioning with four minutes to conclude under the  
[12] timetable you established. This is a matter we  
[13] will bring before the judge, and I'm lodging my  
[14] objection to your termination of this deposition.

[15] MR. SPITZER: You have eight minutes to  
[16] go. Secondly, you are free to begin and we are  
[17] not terminating the deposition haphazardly at  
[18] quarter to eight. We made it clear that Mr. Price  
[19] was available through the entirety of the day. You  
[20] could have discussed with co-counsel how you  
[21] divided the time. That's the normal procedure.  
[22] Your failure to do so is your problem, not ours.

Page 273

[1] MR. HOLT: I will start my deposition  
[2] questioning, and I can say with full confidence I'm  
[3] not going to complete this evening and I'm going to  
[4] seek another opportunity to the Commission.

[5] EXAMINATION BY COUNSEL FOR  
[6] CABLEVISION OF NEW YORK CITY-PHASE I  
[7] BY MR. HOLT:

[8] Q: You testified earlier in response to some  
[9] questions by counsel for Time Warner that there was  
[10] a controversy in New York with respect to Liberty's  
[11] obligation to obtain a cable franchise in order to  
[12] provide service via buildings that were connected  
[13] with hard wire.

[14] A: Yes.

[15] Q: Could you explain to me what you meant by  
[16] controversy.

[17] A: I think that the record is replete with  
[18] references to the fact that there was a petition, I  
[19] believe it was, by Time Warner to the New York  
[20] State Cable Commission, questioning Liberty's need  
[21] for a franchise. And there was litigation  
[22] following that, and there was litigation following

Page 274

[1] that, back and forth as the issue was debated  
[2] before the State Cable Commission, and subsequently  
[3] challenged by Liberty in Federal court. And the  
[4] matter is still in Federal court because we never  
[5] got to what we considered to be the issues in the  
[6] case.

[7] Q: To the best of your understanding, what  
[8] were the issues and controversy in the case?

[9] MR. SPITZER: Which case are you referring  
[10] to?

[11] BY MR. HOLT:

[12] Q: Let's bring it back to the petitions filed  
[13] by Time Warner.

[14] MR. SPITZER: Which petition? You  
[15] referred generically to petitions.

[16] BY MR. HOLT:

[17] Q: When you referred earlier to the petition  
[18] that was made by Time Warner to the New York State  
[19] Cable Commission.

[20] A: Right.

[21] Q: Can you explain to me which petition you  
[22] were referring to.

Page 275

[1] A: I believe it was to the State Cable  
[2] Commission that they should require a franchise  
[3] from Liberty and that Liberty was, in fact, a cable  
[4] system and should require a franchise. I'm not a  
[5] practicing lawyer, so you excuse me for cutting  
[6] through the jargon.

[7] Q: I'm not asking you to give me a legal  
[8] conclusion.

[9] Do you recall approximately when that  
[10] petition was filed by Time Warner? What date?

[11] A: I honestly don't recall. I think it was  
[12] perhaps two years ago at this point. Could have  
[13] been a year-and-a-half. It was more than a year  
[14] ago, less than three years ago. I don't know.

[15] Q: Your recollection is it's prior to January  
[16] 1st of 1995?

[17] A: I don't remember precisely when that was.  
[18] There has been so many petitions and replies and  
[19] appeals and District Court and Circuit Court of  
[20] Appeals, and petitions for certiorari, and motions  
[21] and papers in that case that they would fill a room  
[22] at this point, I think.

Page 276

[1] Q: Has Liberty, to your knowledge, ever had  
[2] occasion to contact any regulatory party in the  
[3] City of New York to inquire about whether or not  
[4] it's under an obligation to obtain a cable  
[5] franchise and authorization from the city in order  
[6] to provide service via hard wire to noncommonly  
[7] owned buildings?

[8] A: We had discussions with New York on that  
[9] subject, yes.

[10] Q: Can you explain to me approximately when  
[11] those discussions have occurred.

[12] A: Most recently continuously over a period  
[13] of time. There were various meetings held, various  
[14] hearings. I remember I testified in one at city  
[15] hall as to whether the franchising process that New  
[16] York City had in mind was something we would be  
[17] interested in, and if not, why not. I remember  
[18] vividly that particular instance.

[19] Q: Do you recall approximately the date on  
[20] which Liberty first contacted the city with respect  
[21] to that issue?

[22] A: No, I don't. As I say, there have been so

Page 277

[1] many activities in that proceeding. I mean, dozens  
[2] and dozens. So I'm not trying to avoid it. It's  
[3] not a failure of memory. There were dozens and  
[4] dozens of papers back and forth and meetings on  
[5] that subject. Some I participated in, some I did  
[6] not participate in.

[7] Q: It's a fact, is it not, that in late 1994  
[8] the New York State Commission Cable Television  
[9] issued a stand-still order requiring Liberty to  
[10] extend no additional cable or other closed  
[11] transmission interconnection buildings not commonly  
[12] owned, controlled or managed?

[13] MR. SPITZER: Are you reading the  
[14] document?

[15] MR. HOLT: I'm asking the witness if that  
[16] is a fact.

[17] MR. SPITZER: I'm not going to permit him  
[18] to answer. Is that the precise language of the  
[19] order?

[20] BY MR. HOLT:

[21] Q: Does the witness have a recollection as to  
[22] whether on or about December 9, 1994, the New York

Page 278

[1] State Commission issued a stand-still order  
[2] requiring Liberty to extend no additional cable or  
[3] other closed transmission interconnection buildings  
[4] not commonly owned, controlled or managed.

[5] A: There was a stand-still order issued by  
[6] the New York State Cable Commission. Was it on  
[7] that date? I don't know. Really, there were a lot  
[8] of papers filed. I would have to see the paper and  
[9] look at the chain of when different events  
[10] occurred. But yes, there was a stand-still issue  
[11] ordered.

[12] Q: Assuming that it was issued on or about  
[13] December 9, 1994, would that, in fact, have been  
[14] brought to your attention on or about that time?

[15] A: Yes.

[16] Q: The following series of questions--and I'm  
[17] going to try to wrap this up for this evening after  
[18] this next series of questions.

[19] A: Please do. I do have to finish and get  
[20] home. I'm not jumping out on you, but I do have to  
[21] leave.

Page 279

[1] term "Liberty," I mean not only Liberty but its  
[2] employees, officers, departments, attorneys, any  
[3] agents acting on its behalf.

[4] At any time prior to the release of the  
[5] HDO in this proceeding which was March 5th, 1996,  
[6] did you or anyone else at Liberty ever contact any  
[7] regulatory authority in New Jersey regarding  
[8] Liberty's plans to operate Lincoln Harbor Yacht  
[9] Club cable system using a hard-wire  
[10] interconnection?

[11] A: I don't know for certain. I have had no  
[12] personal contact with the authorities in New  
[13] Jersey, and I don't know the degree to which our  
[14] people have had contact with.

[15] Q: If such contact had occurred, who at  
[16] Liberty would have been responsible for making such  
[17] contact?

[18] A: I presume our Jim McNaughton who was  
[19] counsel to us, and generally because he lives in  
[20] New Jersey and practices in New Jersey, I presume  
[21] Jim McNaughton would have had those contacts.

[22] Q: Is it your testimony that you wouldn't

Page 280

[1] have been made aware of a contact between  
[2] McNaughton--

[3] MR. SPITZER: His testimony was he didn't  
[4] know.

[5] THE WITNESS: I don't know of those  
[6] contacts. I may or may not have been aware, but I  
[7] don't recall any such contact. I certainly wasn't  
[8] involved in the process.

[9] Was I aware it was going on? I don't  
[10] recall any specific instance of a contact to the  
[11] authorities in New Jersey, but maybe there was. I  
[12] recall when I joined the company some cable company  
[13] was trying to get into the Newport property that we  
[14] were serving then and there was something going on,  
[15] but I wasn't involved in that, all right? And my  
[16] time is up. I'm sorry.

[17] MR. HOLT: I will restate my objection to  
[18] your terminating this deposition.

[19] MR. SPITZER: Put on the record it's  
[20] quarter to eight. Mr. Price has to leave to make  
[21] the final flight.

[22] If Mr. Holt had been here through some of

Page 281

[1] the earlier deposition dates, he would have known  
[2] with respect to Lincoln Harbor Yacht Club there  
[3] were no subscribers and therefore it is not a cable  
[4] system.

[5] (Whereupon, at 7:45 p.m., the taking of  
[6] the deposition was concluded.)

[7] (Signature not waived.)

Page 282

[1] CERTIFICATE OF DEPONENT  
[2] I have read the foregoing 281 pages, which  
[3] contain the correct transcript of the answers made  
[4] by me to the questions therein recorded.

[5]  
[6] PETER O. PRICE

[7]  
[8]  
[9]  
[10]  
[11]  
[12]

[13] Subscribed and sworn to before me this \_\_\_\_  
[14] day of \_\_\_\_\_, 1996.

[15]  
[16]

[17] Notary Public, in and for  
the District of Columbia  
[18] My commission expires: \_\_\_\_\_

[19]  
[20]  
[21]  
[22]

Page 283

[1] CERTIFICATE OF NOTARY PUBLIC

[2]  
[3] I, David A. Kasdan, RPR, the officer  
[4] before whom the foregoing deposition was taken, do  
[5] hereby testify that the witness whose testimony  
[6] appears in the foregoing deposition was duly sworn  
[7] by me; that the testimony of said witness was taken  
[8] by me stenographically and thereafter reduced to  
[9] typewriting under my direction; that said  
[10] deposition is a true record of the testimony given  
[11] by said witness; that I am neither counsel for,  
[12] related to, nor employed by any of the parties to  
[13] the action in which this deposition was taken; and,  
[14] further, that I am not a relative or employee of  
[15] any attorney or counsel employed by the parties  
[16] hereto nor financially or otherwise interested in  
[17] the outcome of the action.

[18]  
[19] DAVID A. KASDAN  
Notary Public in and for  
The District of Columbia

[20]  
[21] My commission expires: October 1, 1999  
[22]

## Lawyer's Notes

---